Supreme Court, U.S.
FILED

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No. _____

In The

Supreme Court of the United States

October Term, 1996

ARTHUR S. DIXON,

Petitioner,

v.

PAMELA J. DIXON,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of New Jersey

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a New Jersey Court Rule purportedly based upon the New Jersey Constitution, and the New Jersey Supreme Court decision in this case based upon said court rule, are constitutional, or whether the derivation and implementation of said court rule, and the resultant decision, without proper qualifications and safeguards, unconstitutionally deny plaintiff access to the courts guaranteed under the due process clause of the Fourteenth Amendment of the Constitution of the United States.

2. Whether plaintiff was denied access to the courts when plaintiff was not allowed to submit a brief in support of his appeal, based upon established state contract law, to the Appellate Division of the Superior Court of New Jersey, under circumstances where plaintiff submitted a motion to file an overlength brief six weeks before the filing due date and said motion was denied after the filing due date and concurrently with granting respondent's motion for summary dismissal.

LIST OF PARTIES

The plaintiff and petitioner, Arthur S. Dixon, and the defendant and respondent, Pamela J. Dixon, are the only litigating parties in this civil action matrimonial matter.

However, pursuant to Rule 28.4(c) of the Rules of the Supreme Court of the United States, plaintiff is herein acknowledging to the Court that 28 U.S.C. § 2403(b), in which the constitutionality of a statute of a state is drawn into question, may be applicable, and that a copy of plaintiff's initial document, plaintiff's petition for a writ of certiorari, will be served upon the Attorney General of the State of New Jersey as directed by the Supreme Court of the United States and its Court Rules.

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PETITION FOR A WRIT OF CERTIORARI

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES.

Arthur S. Dixon, the petitioner herein, requests that a writ of certiorari issue to review the judgment of the New Jersey Supreme Court entered in the above entitled case on June 28, 1996.

OPINIONS BELOW

The opinion of the New Jersey Supreme Court is unreported and is printed in Appendix A, page 18. The judgment of the New Jersey Supreme Court is printed in Appendix A, page 18.

The opinion of the Appellate Division of the Superior Court of New Jersey is printed in Appendix A, page 20. The judgment of the Appellate Division is printed in Appendix A, page 20.

Copies of the orders for the above noted opinions and judgments of the Supreme Court of New Jersey and the Appellate Division are in Appendix B.

A copy of the final divorce judgment order of the Superior Court of New Jersey, Ocean County, is in Appendix C. Court orders of this trial court for plaintiff-appellant's motion for reconsideration of the final divorce judgment order are in Appendix D.

The Superior Court of New Jersey, Ocean County, ruled that a plenary hearing would be necessary to adjudicate a comprehensive twelve-point primary divorce settlement agreement that plaintiff-appellant and defendant-respondent signed after two weeks of negotiations and review by both attorneys (Appendix E).

However, a trial was instead scheduled, and although the plenary hearing was held to be contained within the trial, after six days of the divorce trial, no decision on the validity and enforceability of the primary divorce settlement agreement issued from the trial court. Due to enormous legal costs and evidence of judicial prejudice that will be noted in the Statement of Case, appellant signed, on advice of his attorney, a secondary divorce settlement contract, that was incorporated into the final divorce judgment order.

Appellant learned after the trial that under existing contract law (Appendix F, summary of *M.N. Axinn Co. v. Gibraltar Development, Inc.*), the secondary contract should be held legally invalid, and filed a motion for reconsideration. The trial court, maintaining that appellant's contention that the court had overlooked case law was not a contention that the court had made a mistake, ruled that plaintiff's motion was actually a motion to amend a judgment, not a motion for reconsideration (although it was timely filed as such), and denied appellant's motion and appellant's request for recusal. The trial court then issued other orders that denied appellant his First Amendment right of free speech, his liberty to contract, and a Restraining Order against the early dismissal policies of a school district that violated the constitutional separation of powers (Appendix D).

Appellant then filed a Notice of Appeal December 4, 1995, and requested the customary forty-five day period to file a brief. Appellant filed a motion to file an overlength brief, that was filed December 11, 1995 (Appendix G). When no response came from the court, appellant sent his overlength brief prior to the filing date of January 18, 1996 (Appendix H), and received a Notice of Docketing issued the following day (Appendix I).

Defendant-Respondent had already made a motion for summary disposition that was received December 20, 1995 (Appendix G, Motion List)

In both his brief in support of appeal that was never considered due to the subsequent denial for permission to submit an overlength brief, and in his reply brief to defendant's motion for summary disposition, appellant raised the constitutional issues that arose from the trial court decisions. However, in his reply brief, appellant only alluded to the constitutional arguments that he later presented fully in his overlength brief that was denied, and appellant was never permitted to submit trial transcripts that demonstrated clearly judicial prejudice by the trial court judge.

On February 1, 1995, the Appellate Division on the same day simultaneously denied appellant-plaintiff's motion to file an overlength brief and granted respondent-defendant's motion for summary disposition (Appendix B).

Appellant then raised the aforementioned constitutional issues in his appeal to the Supreme Court of New Jersey, and in addition argued that he had been denied

due process guaranteed under the Fourteenth Amendment and by the Rules of the Court of New Jersey, having been denied the opportunity to submit a brief (Appendix J).

On June 28, 1996, the New Jersey Supreme Court ruled that the constitutional issue raised, (denial of due process), was not a substantial constitutional issue.

JURISDICTION

The judgment of the Supreme Court of New Jersey (Appendix A, page 18) was entered, as noted above, on June 28, 1996. The jurisdiction of the Court is invoked under the United States Constitution, Article 3, § 2, cl. 2:

> "In all other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions as the congress shall make."

More specifically, this appeal is taken pursuant to United States Code Title 28, § 1257, and the Rules of the Supreme Court, Rule 17.1(b) Considerations governing review on certiorari:

> "When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals."

This appeal is also taken pursuant to Amendment 14, § 1, of the Constitution of the United States:

> "Nor shall any state deprive any person of life, liberty, or property without due process of law."

The decision of the New Jersey Supreme Court denied appellant due process of law by denying appellant "access to the courts". Appellant had requested the Supreme Court to remand appellant's appeal of the trial court's final divorce judgment order back to the Appellate Division of the Superior Court because appellant had been denied due process of law by not being allowed to submit a brief in support of his appeal. The Ninth Circuit Court of Appeals has ruled:

> "Due process requires that the state trial and appellate courts listen to defendant's contentions" C.A.9 (Mont.) 1988 *Coleman v. Risley,* 839 F.2d 434.

It is a material fact that the New Jersey Supreme Court denied appellant access to the courts, that is in this instance to have the case remanded back to the appellate court so that appellant could submit a brief.

It is also a material fact that this decision then is "in conflict with the decision . . . of a federal court of appeals" (Rule 17.1(b) previously cited). As noted in a preeminent legal reference, the federal courts of appeals of several states have upheld the principle that generally access to the courts is an essential constitutional guarantee of due process:

> "The right of access to the courts is protected by the due process clauses of the Fifth and Fourteenth Amendments." (*Corpus Juris Secundum,* 1985, Vol. 16D, Pg. 9, citing U.S. – *Mitchum v. Purvis,* C.A.Ala., 650 F.2d 647, *Dreher v. Sielaff,* C.A.Ill., 636 F.2d 1141, *Gillespie v. Civeletti,* C.A.Wash., 629 F.2d 637, *Tyler v. "Ron" Deputy Sheriff or Jailer/Custodian of Prisoners,*

Division 15, St. Louis County Circuit Court, C.A.Mo., 574 F.2d 427, *Silver v. Cormier*, C.A.Colo., 529 F.2d 161)

The question, of course, is whether the New Jersey Supreme Court "wrongly" or "mistakenly" denied appellant access to the Appellate Division of the Superior Court of New Jersey, since the right of access to the courts is not unlimited (United States Supreme Court – *Boddie v. Connecticut*, Conn. S. Ct. 780, 401 U.S. 371, 28 L.Ed.2d 113, conformed to 329 F.Supp. 844).

Under New Jersey court rules, *Rule* 2:2-3(a), appellant was allowed his appeal of the trial court decision "As of Right", and a motion for summary disposition could only be entertained if under *Rule* 2:8-3 Motion for Summary Disposition, (b):

> "Such motion shall *demonstrate* that issues on appeal *do not require further briefs or full record*" (emphasis added).

To the contrary, appellant was not even allowed to submit a brief in support of his appeal after his motion to submit an overlength brief was denied, although *Rule* 2:6-9 Inadequate Appendix or Brief allows:

> "If an appendix or brief does not substantially conform to these rules . . . the court may order the same suppressed and *direct the filing, within a fixed time, of a new appendix or brief*" (emphasis added).

Also, since appellee's motion for summary disposition was granted at the same time appellant's brief was denied, appellant was not able to submit the trial transcripts that he had obtained and which were due within

thirty days of filing the brief. These transcripts were essential to show that appellant had been denied due process in the trial court by not being permitted to have his plenary hearing on the primary divorce settlement agreement (Appendix E) and that essential evidence had been suppressed at trial.

§ 1251 of the United States Code, Title 28, states:

> "The Supreme Court shall have original but not exclusive jurisdiction of: . . . (b) All controversies between the United States and a State"

§ 1257 of Title 28 of the United States Code further specifies:

> "(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by a writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute is drawn in question on the ground of it being repugnant to the constitution, treaties, or laws of the United States".

In this civil action matrimonial case before this Court, the jurisdiction of the Supreme Court is invoked under § 1257(a) because it is herein held that the judgment of the New Jersey Supreme Court, by definition a state court of last resort, that the issue of denial of due process is not a substantial constitutional issue, is a judgment that is "repugnant to the Constitution".

The derivation of the "substantiality" standard in New Jersey case law has no evident or actual basis on close examination, and it is herein submitted that this derivation itself is unconstitutional.

Appendix K is a copy of the pertinent New Jersey court rule from the 1996 Edition of *Rules Governing the Courts of the State of New Jersey*, With Comments and Annotations by Sylvia B. Pressler. It may be noted in the first paragraph of the 'Comment' section under *RULE* 2:2 Appealable Judgments and Determinations, that:

> "This rule, as adopted as part of the 1969 revision, followed the constitutional mandate of N.J. Const., Art. VI, § V, para. 1 and made those changes in the source rules as noted below.
>
> **1. Paragraph (a) (1)** of this rule expressly requires that a *constitutional question, in order to be appealable as of right, must be (substantial)* (emphasis added)."

However, this is *not* what Article VI, § V, para. 1 states. Article VI, § V, paragraph 1 of the New Jersey Constitution (Appendix P) states:

> "Appeals may be made to the Supreme Court (a) in causes determined by the Appellate Division of the Superior Court involving a question arising under the Constitution of the United States or this State".

The annotations themselves make reference to the fact that there exists no real or actual basis for the derivation of the "substantiality" standard:

> "The substantiality requirement, although not express in either the constitutional provision, or the source rule, had nevertheless been construed as implicit therein."

The cases cited for this constructed inference were *Tidewater Oil Co. v. Mayor and Council of Carteret*, 44 N.J.

338, 341-342 (1965), and *Colacurcio Contracting Corp. v. Weiss*, 20 N.J. 258 262 (1955).

The next cases cited are such extraordinary examples of "doubletalk" judicial illogic that they unfortunately constitute an embarrassment to the American legal system. In an attempt to clarify and justify the "substantiality" standard, they state that for a question to be substantial it must not be "colorable" (?) and not previously decided (implying that a second constitutional violation will go unaddressed if in another case a different entity received redress), and that an issue is not substantial if, for unexplained reasons, a factual situation is analyzed and the resulting analysis is applied to constitutional questions (Why?). To cite these cases verbatim in the annotations of the court rule:

> "See also *In re East Windsor Mun. Util. Auth. v. Shapiro*, 57 N.J. 168 (1970), reiterating that the question must be substantial and not colorable and must not already have been the subject of a concluded judicial determination. And see *Piscataway Assoc., Inc. v. Township of Piscataway*, 73 N.J. 546, 549 (1977), further explaining that the standard of substantiality is not met where the issues " * * * involve an analysis of a particular factual situation and application of those facts to statutory and constitutional criteria under established principles."

These cited judgments are like the Emperor's New Clothes, they are without substance, and they leave the substantiality standard nakedly undefined and unjustified.

While discerning criteria, properly applied, are absolutely necessary for the Supreme Court of the United

States and its nationwide caseload, such standards at all levels of appellate review (like the "merit" standard invoked by the Appellate Division in this case), when arbitrarily applied by a lone justice, rob individuals of their constitutional rights.

The core issue of this case, then, is whether due process for a single individual is a substantial constitutional question.

Whatever the opinion rendered, it is undeniably a federal question, and therefore the jurisdiction of the Supreme Court of the United States is properly invoked.

Moreover, because the issue regards the implementation of a standard (what constitutes a "substantial" constitutional issue), the review by this Supreme Court of the specific New Jersey court rule and the methods and procedure in employing this standard is of the utmost importance for insuring a fair and equitable system of justice throughout the entire country, since all states have such standards and implementation procedures.

In the case at bar, a single state justice, on his own motion, decided that "due process" was not a substantial constitutional issue.

Conversely, it is a most substantial constitutional issue for the Supreme Court to overview the manner in which lawsuits are dismissed in state courts, so that in the face of unmanageable workloads, constitutional rights are not sacrificed for expediency.

QUESTIONS PRESENTED

In the *Rules Governing the Courts of the State of New Jersey*, 1996 Edition, Sylvia B. Pressler, *Rule* 2:2-1 Appeals to the Supreme Court from Final Judgments, states:

> "(a) As of Right. Appeals may be taken to the Supreme Court from final judgments as of right: (1) in cases determined by the Appellate Division involving a substantial question arising under the Constitution of the United States or this State;".

The above terminology of *Rule* 2:2-1(a)(1) is drawn from that used by the Supreme Court of the United States itself.

However, a standard that is a safeguard from an onslaught of endless litigation from the entire fifty states for the highest court in the land is misapplied at all levels of appellate jurisdiction in the state courts.

In the case before this Court, a single Appellate Division state justice granted a motion for summary disposition (without having appellant's brief or the trial court transcripts) by deciding that the issue of documented injurious judicial lying during court proceedings as constituting judicial prejudice, and established applicable state contract law, were arguments that lacked "merit", another general standard without specific definition.

Then, as previously cited, a single state Supreme Court justice ruled the due process clause of the Fourteenth Amendment was not a substantial constitutional issue (If the decision were to be interpreted that it was appellant's specific complaint that was not substantial, the decision would be no less questionable; it is hard to

imagine due process being served when a litigant is not entitled to submit written arguments after submitting a denied overlength brief in good faith [C.A.9 (Mont.) *Coleman v. Risley, supra.* "Due process requires that the state trial and appellate courts listen to defendant's contentions"]).

The greater question before the Supreme Court of the United States, then, beyond appellant's individual appeal, is the arbitrary manner in which a lone state judge, in the absence of defining court rules or procedures, was entitled to rule that a fundamental guarantee of the Constitution of the United States was not a substantial constitutional issue, and the lack of safeguards and procedures that resulted in an appeal "as of right" never to be allowed appellate review (with written arguments) of a trial court decision.

The Supreme Court of the United States has its "Rule of Four", whereby four of the associate justices may bring a case for review, demonstrating the high court's wisdom that even at the level of the greatest court ever devised by mankind, joint decision is implemented for substantial decisions.

In its responsibility for the overview of the state courts under Article 3 of the Constitution, the Supreme Court of the United States ought to ensure that in the lower courts single-word standards ("substantial", "merit", etc.) are better defined, or that there is an internal checks and balances system through joint review of two or more justices. This might be done by mandating

that state courts review these issues and implement procedures to ensure due process in regard to the implementation of such broadly defined standards of justice. For the highest court in the land, there must exist a means that it can insure that a lone state justice can not undermine an individual's constitutional rights through "smoke and mirror" semantics.

In summary, the questions presented are whether appellant's appeal should be remanded back to the Appellate Division of the Superior Court of New Jersey in order that he might be permitted to submit a brief in support of his appeal, finding that the New Jersey Supreme Court was incorrect in ruling that the issue of denial of due process for appellant was not a substantial issue; and that in New Jersey there must be instituted a review of procedural dismissal of cases so that constitutional rights are not arbitrarily violated in expediently decreasing the caseload for the courts.

STATUTE INVOLVED

Constitution of the United States, Amendment 14, § 1: "Nor shall any state deprive any person of life, liberty, or property without due process of law."

Also, New Jersey Constitution, Article VI, § V, para. 1, which mandates *Rule* 2:2 Appealable Judgments and Determinations, Part II Rules Governing Appellate Practice in the Supreme Court and the Appellate Division of

the Superior Court, *Rules Governing the Courts of the State of New Jersey* (*Rule* 2:2-1(a)(1) previously cited).

STATEMENT OF THE CASE

The case was briefly outlined in the Opinions Below section because it was believed necessary to give perspective to the somewhat complex circumstances resulting in the lower courts' decisions.

Massar v. Massar, 279 N.J. Super. 89, 93 (App. Div. 1995) was cited by appellant in his appeal of the trial court judgment to the Appellate Division of the Superior Court of New Jersey because its decision addressed the applicability, under New Jersey law, of principles of contract law to divorce settlement agreements reached between the parties:

> " . . . the contractual nature of such (divorce) agreements has long been recognized and *principles of contract interpretation have been invoked* (emphasis added) to define the terms of the agreement and divine the intent of the parties. In interpreting the agreement, the Court will not draft a new agreement for the parties."

In fact and in deed, the trial court judge did, by never completing a plenary hearing on the primary divorce settlement agreement and through the coercion of $25,000 in additional legal costs and threats for more (Appendix L) and the prejudicial denial of relevant financial documents as exhibits for evidence (Appendix M), impose a new agreement for the parties.

Having established that principles of contract law were applicable to the primary and secondary divorce settlement agreements, appellant cited, as a cornerstone for his appeal, the decision of *M.N. Axinn Co. v. Gibraltar Development, Inc.*, 45 N.J. Super. 523 (Appendix F):

> "A subsequent agreement, if it is to impose the obligation of a contract, must rest upon a new and independent consideration."

Appellant used about twenty pages in his overlength brief to establish that in the secondary contract of the final divorce judgment order, appellant received no consideration as compared to the primary settlement agreement. Appellant similarly at length demonstrated in his submitted brief that the agreement was voluntary and that there was not a single element of fraud involved (it should be pointed out that the primary agreement was never held to be invalid in any respect by the trial court).

Appellant also showed through court transcripts that the trial judge twice lied about the case, once in asserting that it was appellant's fault for the four-year case (that rather than because of defendant and her attorney's bad faith and the court's lack of determination to bring the case to trial, it was appellant's bankruptcy [which actually occurred three years after the filing date]) Appendix N, and once in asserting that there was no Restraining Order against the defendant-respondent, Appendix O.

Appellant argued that the documented lying by the trial judge, and the resultant harm to appellant's case, constituted the "malice and ill will" which was "fundamental" to establishing judicial prejudice under New Jersey statutes:

> N.J.S.A. 2A:15-49 "Fundamental reason supporting judge's disqualification is manifestation of malice and ill will towards accused." Also cited in *Freudenreich v. Mayor and Council of borough of Fairview,* 114 N.J.L. 290, 176, A.162.

As previously noted, the Appellate Division, without allowing appellant to submit a brief, ruled that the documented lying/malice and ill will/judicial prejudice and the duly cited case law regarding established contract law upholding appellant's primary divorce settlement agreement, were arguments so devoid of "merit" that no formal appeal would be allowed.

Appellant then appealed to the Supreme Court of New Jersey on the constitutional ground of having been denied due process by not having been allowed to submit a brief to the Appellate Division.

In his appeal to the state Supreme Court, appellant noted that *Rule* 2:8-3 Motion for Summary Disposition of the *Rules Governing the Courts of the State of New Jersey* stipulated:

> "(b) Such motion shall demonstrate that the issues on appeal do not require further briefs or full record."

Appellant claimed that this *Rule* was violated because appellant was not even permitted to file a brief in support of his appeal, nor able to submit the trial transcripts (which were due under court rules within thirty days of filing the brief).

Appellant also cited *Rule* 2:6-9 Inadequate Appendix or Brief:

> "If an appendix or brief does not substantially conform to these rules . . . , the court may order . . . the filing . . . of a new appendix or brief."

Appellant then noted that the Appellate Division had not allowed him to submit a regular length brief, after it had waited nearly two months to deny his motion for an overlength brief (and more than two weeks after appellant's overlength brief was actually delivered for filing to the Appellate Division).

Finally, appellant cited *Rule* 2:2-3 Appeals to the Appellate Division from Final Judgments (a) "As of Right", and pointed out that this "right" had been abrogated by the Appellate Division's justice denying appellant the right to submit a brief (Brief to N.J. Supreme Court, Appendix J).

The case then closed in the state of New Jersey June 28, 1996, when a New Jersey State Supreme Court Justice ruled that appellant's appeal based on denial of due process did not raise a substantial constitutional issue.

REASONS FOR GRANTING WRIT

The Constitution of the United States was framed for the primary purpose of protecting individual rights. Therefore the issue of the violation of an individual's constitutional right is as fundamental as the Constitution itself.

Usually, an individual's constitutional rights are expected to be protected in the state courts.

In this case, being deprived of the opportunity to submit a brief in support of his appeal, appellant was deprived *totally* of the right of appellate review in the State of New Jersey. Being deprived of his right to access to the courts in the State of New Jersey, appellant now appeals to the Supreme Court of the United States.

But what is clearly of paramount importance is the review of the procedural system in New Jersey whereby appeals are dismissed by single judges *without any explicit reason*. Conciseness should not be used as a means for arbitrary denial of rights, and there is a clear and compelling need for the institution of a review system where at least two justices agree that an argument is not "substantial" or is without "merit" before access to the courts is denied on appeal. Otherwise, legal standards such as "substantial" and "merit" become like the word "obscenity" – there is no definition for it and one can only hope that it is recognized when it is seen.

CONCLUSION

Wherefore, for all of the reasons cited herein for this petition for a writ of certiorari, it is respectfully requested that the Supreme Court of the United States grant this petition, finding that the New Jersey Supreme Court's interpretation of Article VI, § V, paragraph 1 of the New Jersey State Constitution (Appendix P), under Court Rule 2:2-1(a)(1), in regard to the "substantiality" requirement, may lack sufficient legal justification and that New Jersey's Court Rule 2:2-1(a)(1) as it now stands, without qualifications and safeguards, may not be legal. It is

further respectfully requested that the Supreme Court of the United States find that the arbitrary invocation of this Rule (Appendix K) without explanation, regarding plaintiff's constitutional right to due process (Appendix A, New Jersey Supreme Court Order for A-195/M-1365 dismissing plaintiff's appeal on the Court's own motion), may have deprived plaintiff of his constitutional right to access to the courts; and furthermore finding that the possible unconstitutionality of New Jersey Court Rule 2:2-1(a)(1), in both its interpretation and its implementation, is a substantial constitutional question that warrants review by the United States Supreme Court to ensure that constitutional rights are adequately protected on the state level.

Respectfully submitted,

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Dated: September 13, 1996

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APPENDIX A

SUPREME COURT OF NEW JERSEY
A-197/M-1365 September Term 1995
41,963

ARTHUR S. DIXON,

Plaintiff-Appellant,

v.

PAMELA DIXON,

Defendant-Respondent.

ORDER

(Filed Jun 28, 1996)

This matter having been duly presented to the Court, and the Court having determined that the appeal does not raise a substantial constitutional question under *Rule* 2:2-1(a)(1) and the case law, the appeal (A-197) is hereby dismissed on the Court's own motion, and the motion for a stay pending appeal (M-1365) is dismissed as moot.

WITNESS, the Honorable Alan B. Handler, Presiding Justice, at Trenton, this 28th day of June, 1996.

/s/ Stephen W. Townsend
CLERK OF THE SUPREME COURT

SUPREME COURT OF NEW JERSEY
M-151 September Term 1995
41,963

ARTHUR S. DIXON,

Plaintiff-Respondent,

v.

PAMELA J. DIXON,

Defendant-Movant.

ORDER

(Filed Jun 28, 1996)

This matter having been duly presented to the Court, and the Court having dismissed plaintiff's appeal on its own motion for failure to raise a substantial constitutional question, it is ORDERED that the motion for summary disposition is dismissed as moot.

WITNESS, the Honorable Alan B. Handler, Presiding Justice, at Trenton, this 28th day of June, 1996.

/s/ Stephen W. Townsend
CLERK OF THE SUPREME COURT

APPENDIX B

ORDER ON MOTION WHEN CROSS MOTION FILED

ARTHUR S. DIXON
VS
PAMELA DIXON

SUPERIOR COURT OF
NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A -002433-95T1
MOTION NO. M -002626-95
BEFORE PART: C
JUDGE(S): PETRELLA
LEVY
EICHEN

MOTION FILED: DECEMBER 11, 1995 BY: ARTHUR S DIXON ANSWER(S) FILED:

SUBMITTED TO COURT: JANUARY 24, 1996

ORDER

(Filed Feb. 5, 1996)

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS 1ST DAY OF FEBRUARY, 1996 HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT
- TO FILE AN OVERLENGTH BRIEF

GRANTED	DENIED	OTHER
( )	(X)	(X)

SUPPLEMENTAL:

See Order on M-2628-95.

Ref. Ocean County Docket No. FM-15-416-92

FOR THE COURT:

/s/ James J. Petrella
JAMES J. PETRELLA P.J.A.D.

ORDER ON CROSS MOTION

ARTHUR S. DIXON
VS
PAMELA DIXON

SUPERIOR COURT OF
NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A -002433-95T1
MOTION NO. M -002628-95
BEFORE PART: C
JUDGE(S): PETRELLA
LEVY
EICHEN

CROSS MOTION FILED: DECEMBER 20, 1995
BY: PAMELA DIXON ANSWER(S)
FILED: DECEMBER 26, 1995
BY: ARTHUR S DIXON

SUBMITTED TO COURT: JANUARY 24, 1996

ORDER

(Filed Feb. 5, 1996)

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS 1ST DAY OF FEBRUARY, 1996 HEREBY ORDERED AS FOLLOWS:

MOTION BY RESPONDENT
– FOR SUMMARY DISPOSITION

GRANTED	DENIED	OTHER
(X)	( )	(X)

SUPPLEMENTAL:

Summary disposition is granted. The appeal is dismissed as without merit. See R. 2:11-3(e)(1)(A) and (B).

See Order on M-2626-95.
Ref. Ocean County Docket No. FM-15-416-92

FOR THE COURT:

/s/ James J. Petrella
JAMES J. PETRELLA P.J.A.D.

APPENDIX C

CARDUCCI & MOYLEN
Attorneys at Law
256 Main Street – P.O. Box 430
Hackettstown, New Jersey 07840
(908) 852-1303
Attorneys for Plaintiff, Arthur S. Dixon

ARTHUR S. DIXON, *Plaintiff,* v. PAMELA DIXON, *Defendant.*	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION: FAMILY PART OCEAN COUNTY DOCKET NO. FM-15-416-92 Civil Action **FINAL CONSENT JUDGMENT** (Filed Aug. 16, 1995)

THIS MATTER having come on for trial before this Court on June 19, 1995, and it appearing from the pleadings that the Complaint for Divorce was filed in this action on September 26, 1991, and that during the pendency of these proceedings, the Plaintiff filed a Complaint for Absolute Divorce in the State of Pennsylvania, and it further appearing that a Decree in Divorce between the parties was entered in the Court of Common Pleas of Monroe County, Forty-Third Judicial District of the Commonwealth of Pennsylvania under Case No. 911-DR-1993 on February 28, 1994, and it further appearing that the Pennsylvania decree was limited solely to divorcing the parties from the bonds of matrimony, with all other issues

arising out of the parties' marriage including custody of the minors born of the marriage, child support, spousal support, alimony, equitable distribution, counsel fees and all other issues being reserved to this Court in this action, and the trial of these issues having proceeded before this Court on June 19, 1995; June 20, 1995; July 6, 1995; July 7, 1995; July 10, 1995; July 21, 1995; July 24, 1995, and July 25, 1995; and during the course of this trial, counsel for both parties having advised the Court that the parties have settled this matter, and on July 25, 1995 both parties were sworn and testified that they had agreed to a resolution of all issues outstanding in this case, which resolution was contained in a Support And Property Settlement Agreement marked into evidence as J-1, and both parties having testified they entered into this Agreement freely, knowingly and voluntarily; that they have read and reviewed this Agreement before signing it after due deliberation and that they understand the contents of J-1; that they consider it to be a fair and equitable resolution of all issues outstanding between the parties arising out of their marriage; and that they voluntarily intend to be bound to the rights and obligations contained in J-1, and the parties, through counsel, having consented to the form and entry of the within Consent Judgment, and this court having made no finding of fact as to the reasonableness and fairness of said Agreement; but his Court being satisfied from the testimony of the parties that the parties did knowingly, voluntarily, intelligently and with full knowledge of its contents enter into said Agreement and that the parties themselves deem it to be fair and reasonable, and good cause having been shown for the entry of this Final Consent Judgment,

IT IS on this 11th day of August, 1995,

ORDERED AND ADJUDGED as follows:

1. The Court finds that the parties have freely, knowingly and voluntarily entered into the Interspousal Agreement marked as J-1, with the advice of counsel, that they consider J-1 to be fair and equitable and intend to be bound by it.

2. The Interspousal Settlement Agreement marked into evidence as J-1 be and the same hereby is incorporated into and made a part of this Final Consent Judgment and shall survive this Judgment. The Court took no testimony with respect to the reasonableness of the terms and provisions of the Agreement, but finds that the parties have entered into it voluntarily and because they believe it is fair and reasonable;

3. The parties are ordered and directed to comply with all of the provisions of the Interspousal Settlement Agreement marked as J-1 in evidence and incorporated into this Judgment.

/s/ Thomas E O'Brien
HON. THOMAS E. O'BRIEN, J.S.C.

I hereby consent to the form and entry of the within Judgment

/s/ Gary Moylen
GARY WM. MOYLEN, ESQ.
Attorney for Plaintiff Arthur S. Dixon, M.D.

I hereby consent to the form and entry of the within Judgment

/s/ Alan J. Cornblatt
ALAN J. CORNBLATT, ESQ.
Attorney for Defendant Pamela J. Dixon

JOINT EXHIBIT
J-1 EVID
MV 7-25-95

STRIKE OUT WHAT DOES *NOT* APPLY.

SUPPORT AND PROPERTY SETTLEMENT AGREEMENT

(Received & Filed Aug. 16, 1995)

THIS AGREEMENT, made and entered into this 25th day of July, 19995, by and

BETWEEN

Pamela Dixon

hereinafter referred to as the "Wife"

AND

Arthur S. Dixon

hereinafter referred to as the "Husband"

WITNESSETH:

WHEREAS, the parties hereto were married on April 28, 1984; and

WHEREAS, 2 children were born of the marriage, to wit: Phillip (10) and Virginia (6); and

WHEREAS, in consequence of the disputes and of the unhappy differences between them, the parties have agreed to separate and to live separate and apart one from the other; and

WHEREAS, the parties are [words stricken] divorced by Judgment of the Superior Court of [words stricken] Pennsylvania, Docket Number 911-DR-1993; and

WHEREAS, the parties are desirous of settling their property rights and the rights of custody of the said children of the marriage as well as questions of visitation, support, alimony, division of property, counsel fees and other costs;

NOW THEREFORE, in consideration of the mutual covenants, promises and agreements hereinafter contained, it is agreed by each party with the other, as follows:

/s/ Pamela June Dixon /s/ Arthur S. Dixon

1. The recitals of facts set forth above are expressly confirmed as being in all respects true and accurate.

2. So long as the Husband and Wife shall continue to live separate and apart from each other, they shall be free from any interference, restraint and control by the other as fully as if she or he were sole and unmarried. For the rest of their lives, neither party shall molest nor interfere with the other in any way.

3. (The parties, [words stricken]) shall have ([words stricken], joint) legal custody of the infant children of the

marriage. Residential custody shall be with the (Wife, [words stricken] who shall be the primary caretaker); the Non-residential parent:

[words stricken]

(b) Shall have time-sharing with the infant children as follows: Reasonable and Liberal, Husband shall, in accordance with prior practice of the parties, give Wife his schedule each month in advance. Wife will accomodate [sic] husbands schedule to the best of her ability, and, at least alternate weekends and three weeks during summer vacation.

(c) In addition, the parties shall comply with the Court's Holiday/Special Days Schedule annexed hereto as "Schedule A".

4. Child support for the children of the marriage shall be paid, until emancipation, by (Husband/[words stricken]) to ([words stricken]/Wife) through the Probation Department of [words stricken] Ocean County [words stricken] However should he miss two (2) payments a wage execution shall issue. Child support shall be reviewed every three years.

Child support shall be paid for the two children in the amount of $450.00 per week; the first payment shall be due one week after the date of his last payment to the Ocean County Probation Department pursuant to pendente lite order

/s/ Pamela June Dixon /s/ Arthur S. Dixon

5. ([words stricken]/Both parents) will maintain all health care insurance for the benefit of the child(ren),

until emancipation, available through ([words stricken]/ their) employment(s) at reasonable costs. Each parent shall be provided with appropriate indentification [sic] cards at all times until all child(ren) are emancipated. The primary insurance shall be that provided by ([words stricken]/Wife).

6. Neither parent will, except in case of emergency, incur any expense for health care treatment of any child without giving advance, reasonable, notification to the other parent. The purpose of such notification is to enable the other parent to determine the necessity for the proposed course of treatment and the reasonableness of the proposed cost.

Health care expenses for children which are not covered by health care insurance*, shall be paid as follows:

71% by Husband.

29% by Wife.

* including Medical, Dental, Orthodontic, prescriptions, optical & mental health

7. Husband will maintain life insurance on his life, during the minority of the child(ren), with the child(ren) as beneficiaries and the Wife as Trustee, as follows: $200,000 face value. Husband shall execute an irrevocable letter of authority, directing the insurance carrier(s) to fully respond to any inquiry made by Wife regarding such life insurance. Husband may not borrow against life insurance policy(s).

Annual proofs of complaince [sic] with this Paragraph will be provided, by Husband to Wife.

/s/ Pamela June Dixon /s/ Arthur S. Dixon

[words stricken]

[words stricken]

8. The parties agree that neither will speak ill of the other to the child(ren), or in the presence of the child(ren), and each will endeavor to instill love and respect in the child(ren) of the marriage for the other.

The parties further agree to use all reasonable efforts to maintain free access and to create a feeling of affection between themselves and the child(ren). Neither shall do anything to hamper the natural development of the child(ren)'s love and respect for the other party.

9. Any arrears accrued pursuant to any Pendente Lite Order entered in the action now pending between the parties shall be paid as follows: Husband will pay Wife $5000.00 within 30 days as payment, in full for all arrears accrued prior to July 13, 1995. The Ocean County Probation Department is authorized and directed to adjust its books accordingly.

/s/ Pamela June Dixon /s/ Arthur S. Dixon

10. The parties have made as between themselves, a full and complete division of varied and diverse personal property acquired by them, or either of them, during the course of the marriage: These shall be divided as shown on "Schedule B" annexed and this document shall serve as a bill of sale therefore.

11. Each party specifically waives his or her interest in and to any I.R.A., pension fund or other retirement

fund or funds, including death or survivors benefits, acquired by the other party during the marriage.

[words stricken]

[words stricken]

/s/ Pamela June Dixon /s/ Arthur S. Dixon

12. Each party specifically waives any interest which he or she may have in and to any stocks, bonds, certificate of deposit, and/or monies on deposit in banks, credit unions and/or savings institutions, of the other.

[words stricken]

[words stricken]

13. The parties have available for equitable distribution real estate which shall be divided as follows:

(a) 511 Delos Drive, Tom River, N.J. Solely to Wife who shall assume the mortgage thereon and indemnify Husband with respect thereto

(b) lot in Poconos to Husband solely. Husband shall indemnify Wife with respect to all charges thereon

14. The parties have available for equitable distribution certain other assets which shall be divided as follows:

Each shall retain his or her vehicle and shall be responsible for all payments due thereon

Wife will hold the Haviland china in trust for Virginia*

Husband shall hold the $10,000 bond in trust for both children equally, to be used for college

* Husband and Wife shall have joint ownership of the Haviland china

/s/ Pamela June Dixon /s/ Arthur S. Dixon

15. Each party hereby waives alimony or support monies from the other party, now and in perpetuity, subject to the reservation set forth in Paragraph 22 hereof.

[words stricken]

[words stricken]

[words stricken]

[words stricken]

16. This Agreement is entered into by the Wife upon the Husband's representation that his [words stricken] earnings [words stricken] for the first 6 months of 1995 from Pocono Pediatric Assoc., have been $58,000 [words stricken].

This Agreement is entered into by the Husband upon the Wife's representation that her [words stricken] earnings [words stricken] beginning September, 1995 will be [words stricken] $42,000.00 per [words stricken] year.

17. Each party represents that he or she has had, independent legal advice by counsel of his or her own selection regarding all the terms and provisions of this Agreement.

/s/ Pamela June Dixon /s/ Arthur S. Dixon

[words stricken]

[words stricken]

19. The parties incorporate into this Agreement the additional provisions set forth on "Schedule C [words stricken]" annexed hereto.

20. The children's college expenses and costs shall be paid in accordance with the Guidelines set forth in *Newburgh v. Arrigo*, 88 *N.J.* 529 (1982).

21. The parties agree that their mutual debts shall be paid as follows: None

A. To be paid by Husband: – /s/ Pamela June Dixon

B. To be paid by Wife: – /s/ Arthur S. Dixon

22. The bankruptcy of either party, prior to full payment of the indebtedness assumed by him or her in Paragraph 21, shall be a basis for the non-bankrupt spouse to seek alimony sufficient to pay any debt which he or she may be required to pay by reason of the others bankruptcy.

The Chapter 7 bankruptcy of either party, prior to transfer of all assets required to be transferred to the non-bankrupt spouse by the terms of this Agreement, shall be a basis for the non-bankrupt spouse to seek alimony which is fit, reasonable and just.

23. Each party shall be solely responsible to pay his or her individual health care expenses after the marriage between the parties is dissolved.

24. Neither party shall be required to maintain health care insurance for the benefit of the other party after the marriage between the parties is dissolved.

[words stricken]

[words stricken]

[words stricken]

[words stricken]

/s/ Pamela June Dixon /s/ Arthur S. Dixon

[words stricken]

[words stricken]

[words stricken]

26. Each party warrants to the other that on or before execution of this Agreement, the warrantor has not incurred any obligation that has not been fully disclosed, as either an obligation on which the other party is or may become personally liable or an obligation which could be enforced at any time against any asset held or to be received under this Agreement by the other party. Each party covenants not to incur any such obligation on or after execution of this Agreement, except as expressly authorized by subsequent Agreement between the parties or by Order by a Court of competent jurisdiction.

27. In consideration of the premises and the mutual covenants

/s/ Pamela June Dixon /s/ Arthur S. Dixon

herein contained, each party does hereby forever release, acquit, and discharge the other from any and all claims and demands which either may now or hereafter have against the other. Each party does hereby release the other and his or her estate from any and all interest, share

or claim that he or she may have in any property, real or personal, now owned or hereafter to become owned by the other, including all claims by way of distributable shares or family exemptions, or otherwise, and hereby waives the right to elect to take against any will or testament the other may have made or may make.

Each party does hereby agree to accept the provisions herein contained in lieu of any interest in the real estate of the other, whether now owned or hereafter acquired and in lieu of all claims against the other for alimony, alimony pendente lite, maintenance and support and in full satisfaction of all other claims and demands of every kind and nature, except the obligations imposed by this Agreement, and does hereby release the other and the other's estate from any and all interest, share or claim which he or she may have in any property, personal or mixed, now owned or hereafter to become owned by the other, including all claims by way of statutory distribution or descent, distributing shares, family exemptions, or otherwise, except for the obligations imposed by this Agreement.

It is the intention of the parties that each waives any interest which he or she may have to equitable distribution, pursuant to *N.J.S.A.* 2A:34-23 et seq., except as specifically set forth to the contrary herein.

28. The waiver of any provision of this Agreement shall not constitute the waiver of any other provisions hereof.

/s/ Pamela June Dixon /s/ Arthur S. Dixon

29. Nothing in this Agreement contained shall prevent either party from obtaining a Judgment in an action for divorce presently pending in the Superior Court of New Jersey, by reason of any past or future matrimonial offense of either party. Either party may request the Court to confirm this Agreement and order that it be incorporated in the Judgment of Divorce. In any event, this Agreement shall not merge in such Judgment, but shall survive any such Judgment.

30. This Agreement contains the entire understanding of the parties, and there are no representations, warrantees, covenants, or undertakings other than those expressly set forth herein.

31. A modification or waiver of any of the provisions of this Agreement shall be effective only if made in writing and executed with the same formality as this Agreement. The failure of either party to insist upon strict performance of any of the provisions of this Agreement shall not be construed as a waiver of any subsequent default of the same or similar nature.

32. During the minority of any child, each party shall, at all times, keep the other informed of his or her place of residence, and telephone number, and each shall promptly notify the other of any change, giving the address of, and telephone number at, the new place of residence. Each party shall immediately advise the other in the event he or she remarries.

33. In the event of any dispute arising out of this Agreement, or the performance thereof, or in respect of the (Husband's/[words stricken]) right of visitation or their compliance therewith, the Husband and Wife agree

that all attempts should be made between them to settle the same by agreement before using the Courts for any determination.

/s/ Pamela June Dixon /s/ Arthur S. Dixon

34. This Agreement shall be governed by the laws of the State of New Jersey.

35. Each of the parties shall, from time to time, at the request of the other, execute, acknowledge, and deliver to the other party any and all further instruments that may be reasonably required to give full force and effect to the provisions of this Agreement.

36. In the event of the death of the parent having custody of the child, the surviving parent shall have the sole and exclusive custody of the child of the marriage.

37. In the event that any monies are, pursuant to this Agreement, to be paid for equitable distribution over a period of time with interest, the payor shall have the right to prepay at any time without penalty.

38. The parties acknowledge that by entering into this Agreement each is satisfied with the disclosures which have been made, and each is further satisfied that this Agreement is a fair, reasonable and equitable resolution of all issues dividing the parties.

39. The parties acknowledge that they have been informed of and understand their rights to seek financial disclosure from and to compel inspection of the personal and financial records of the other party, as well as their rights to have accountants, appraisers, investigators and other experts appraise or evaluate the property of the

other. Each party has waived and hereby waives his or her discovery rights and each acknowledges that he and she have had sufficient time and opportunity to have such disclosure as each deemed necessary and each has elected not to take any further steps, themselves or through others, in connection with such disclosure,

/s/ Pamela June Dixon /s/ Arthur S. Dixon

discovery, inspection, investigation, appraisal or evaluation.

The parties each acknowledge that this Agreement is fair, adequate, just and reasonable, and has not been the result of any fraud, duress or undue influence exercised by the other party or by any other person or persons upon either of them.

The parties each acknowledge that the legal and practical effects and all of the consequences of this agreement and of each of its provisions have been fully explained to each of them by their counsel, particularly in light of their respective financial circumstances. The parties further acknowledge that they have been fully informed of the definition of marital and separate property as established by the laws of this state and of his or her respective legal rights, benefits, and liabilities, and each is aware and understands his or her rights to support and marital property acquired during the marriage.

41. The parties represent to each other that they have ascertained and weighed all of the facts and circumstances likely to influence their judgment and that they have each given due consideration to such facts and circumstances, including the risks and costs attendant to

litigation, and that they are entering into this agreement freely and voluntarily.

Notwithstanding the foregoing waivers, in the event that it subsequently appears that any asset or income of significant value has been omitted, the other party may, as to that asset or income, claim an equitable share thereof, and the reasonable attorneys' fees, expert fees, costs and disbursements incurred in establishing such an omission shall be borne in full by the party having failed to make

/s/ Pamela June Dixon /s/ Arthur S. Dixon

such disclosure. The parties acknowledge that inheritances are not subject to equitable distribution.

42. If any of the provisions of this Agreement are held to be invalid or unenforceable, all other provisions shall, nevertheless, remain in full force and effect.

43. If the parties, after the effective date of this Agreement, cohabit regularly, sporadically, or temporarily, or if they reconcile, this Agreement, nevertheless, shall continue in full force and effect until modified, altered or terminated by an Agreement in writing to such effect signed by each of the parties hereto.

Neither party has represented to the other, prior to the execution of this Agreement, that there is any prospect of reconciliation and no promises or inducements have been offered by one party to the other in this regard.

44. The Agreement shall be effective upon its signature by both parties. The parties agree that this Agreement shall be prepared in four counterparts, each party

retaining two thereof, and each of which shall be deemed an original Agreement.

45. EACH OF THE PARTIES REPRESENTS THAT THEY HAVE CAREFULLY READ AND UNDERSTOOD EACH AND EVERY PAGE OF THIS AGREEMENT PRIOR TO SIGNING BELOW.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

/s/ Arthur S. Dixon (L.S.)

/s/ Pamela June Dixon (L.S.)

Signed, Sealed and delivered in the presence of:

/s/ Alan J. Cornblatt
AS TO WIFE

/s/ Gary Moylen
AS TO HUSBAND

HOLIDAY VISITATION SCHEDULE

The following holidays shall be alternated between the parties each year. Unless otherwise indicated, those holidays shall run from 10:00 a.m. to 7:30 p.m.

1. Christmas Eve, December 24th at 6:00 p.m. to Christmas Day, December 25th at 11:00 a.m.

2. Christmas Day, December 25th at 11:00 a.m. to December 26th at 4:00 P.M.

3. New Year's Eve, December 31st at 6:00 p.m. to January 1st at 11:00 a.m.

4. New Year's Day, January 1st from 11:00 a.m. to 7:30 p.m.
5. Martin Luther King Day, if relevant (unless the child is in school)
6. Washington's Birthday, Lincoln's Birthday, President's Day (unless the child is in school
7. Good Friday, 10:00 a.m. to Easter Saturday at 4:00 p.m.
8. Easter Saturday, 4:00 p.m. to Easter Sunday at 7:30 p.m.
9. Memorial Day
10. Fourth of July
11. Labor Day
12. Thanksgiving Day

SPECIAL DAYS

The following Special Days shall be adhered to as indicated.

1. Father's Birthday to father (from 4:00 p.m. to 8:00 p.m. if it falls on a school day)
2. Mother's Birthday to mother (from 4:00 p.m. to 8:00 p.m. if it falls on a school day)
3. Mother's Day to mother
4. Father's Day to father
5. Child's Birthday – Non-custodial parent to have at least three (3) hours visitation

/s/ Pamela June Dixon /s/ Arthur S. Dixon

Division of property-Furniture, Appliances, and other belongings (excluding property owned by the individual parties prior to their marriage) for the divorce settlement of Arthur S. Dixon and Pamela J. Dixon

Pamela J. Dixon	Arthur S. Dixon
Merkur Automobile (insurance payment)	Honda Automobile (trade-in payment)
Cherry Coffee Table	Peach Upholstered Chair
Mahogany Table (given by Mildred S. Dixon)	Picture of Carriage and Rider
Office Desk	Dresser in Phillip's room (owned by Dr. Dixon before marriage) – Oak with small drawers
Den Sleeper Couch	2 Bookcases given by Judge Arthur F. Shaw
Teak Table	Safe
Dresser in Phillip's room (finished by Ms. Dixon)	Cam Corder
Marble-top Dresser	Cherry Dining Room Table and matching Chairs
China Cabinet	Glass Cart and crystal given by Mildred S. Dixon
Grandfather Clock	Walnut spool-posted bed in Phillip's room
Washer	
Dryer	
Refrigerator	
VCR	
Lawn Furniture	
TV	
2 matching Living Room Chairs	

Lamps (other than specified)
Naugahyde Chair
Pictures (other than specified)
Curio Cabinet
Round brown table given by Mildred S. Dixon
Office Chair
Shell-glass Table Lamp
Cherry Desk

We agree to the above division of personal property

/s/ Pamela June Dixon Date 1/22/95

/s/ Arthur S. Dixon Date 1/22/95

/s/ Pamela June Dixon /s/ Arthur S. Dixon

1. Husband shall be solely responsible to pay the bill of Jerome Donovan, CPA, which shall be paid within 10 days
2. Husband shall retain the cash surrender value of the Northwest Mutual Insurance Policy
3. Husband shall pay $15,000 to W's attorney, Alan J. Cornblatt, Esq. which shall be paid by *___1995
4. Husband shall pay Wife $1000 for her interest in the cash surrender value of the Northwest Mutual Insurance Policy, after allowance for Husbands interest in Wife pension. Wife shall retain her pension
5. The wife shall have the child deductions for Virginia on her state and federal income tax returns. The husband shall have the deductions for Phillip on condition that he has no child support arrears as determined by the Ocean County Probation Department. After Phillip is no longer a deduction, the parties will alternate the deduction for Virginia.
6. Medical insurance benefits shall be paid directly to the Health Care providers in accordance with N.J.S.A. 2A:34-23(b)

7. Should either Husband or Wife fail to abide by the terms of the within agreement, the defaulting party shall indemnify the other for all reasonable expenses and costs, including attorney's fees, incurred in successfully enforcing this agreement.

* $5000.00 within 60 days
  $5000.00 by 12/31/95
  $5000.00 by 3/31/95

/s/ Pamela June Dixon /s/ Arthur S. Dixon

APPENDIX D

B: DIXON:ORDER:lgb
ALAN J. CORNBLATT, ESQUIRE
A PROFESSIONAL CORPORATION
44 Princeton Avenue
Brick, New Jersey 08724
(908) 840-9595
Attorney for Defendant

ARTHUR S. DIXON, Plaintiff,	:	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION – FAMILY
vs.	:	PART OCEAN COUNTY
PAMELA J. DIXON, Defendant,	:	DOCKET NUMBER: FM-15-416-92
	:	CIVIL ACTION
	:	ORDER

(Filed Nov. 8, 1995)

THIS MATTER being opened to the Court on October 20, 1995, by Alan J. Cornblatt, Esquire, attorney for the Defendant, and it appearing that the Plaintiff has had notice of the Defendant's Motion, and it further appearing that the Toms River Board of Education has had notice of the Defendant's Motion, and the Court having considered the letter dated October 16, 1995, written by Thomas E. Monahan, Esquire, attorney for the Toms River Regional Schools, and good cause appearing for the making of the within Order,

IT IS this 8th day of November, 1995,

ORDERED as follows:

1. The within Order shall be effective as at October 20, 1995;

2. The Toms River Regional Schools are restrained from allowing the Plaintiff, Arthur S. Dixon, M.D., to remove Phillip Dixon or Virginia Dixon from the school which they attend prior to the end of any school day without the express written consent of the Defendant, Pamela J. Dixon.

/s/ Thomas E. O'Brien
THOMAS E. O'BRIEN

B: DIXON:ORDER2:lgb
ALAN J. CORNBLATT, ESQUIRE
A PROFESSIONAL CORPORATION
44 Princeton Avenue
Brick, New Jersey 08724
(908) 840-9595
Attorney for Defendant

ARTHUR S. DIXON, Plaintiff, vs. PAMELA J. DIXON, Defendant,	:	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION – FAMILY PART OCEAN COUNTY DOCKET NUMBER: FM-15-416-92 CIVIL ACTION ORDER ON NOTICE OF MOTION AND CROSS NOTICE OF MOTION

(Filed Nov. 1995)

THIS MATTER being brought before the Court on Motions of Arthur S. Dixon, Plaintiff, and Cross Motion of Pamela J. Dixon, Defendant, and the Court having considered the documents filed and heard the testimony of Sandra Connelly of the Ocean County Probation Department, and the Plaintiff having waived the opportunity to present oral argument, and the Court having considered the oral argument presented by the Defendant's attorney, Alan J. Cornblatt, Esquire, and good cause appearing for the making of the within Order,

IT IS this 9th day of November, 1995,

ORDERED as follows:

1. The within Order shall be effective as at October 20, 1995;

2. The Plaintiff's Motion to vacate the Judgment of Divorce entered in this matter August 11, 1995, is considered by the Court to be a Motion made pursuant to *Rule* 4:50-1 and that Motion is denied;

3. The Plaintiff's Motion to require this Court to recuse itself is denied;

4. The Plaintiff's application that this Court find that the letter signed by both parties, marked "J-1" in the proceedings before this Court, be found to have been a valid and enforceable agreement between the parties, is denied;

5. The Plaintiff's supplemental application for sanctions against the Defendant is denied;

6. On the Defendant's Motion, Arthur F. Silverblatt, Esquire, of 405 Bicentennial Building, 15 Public Square, Wilkes-Barre, Pennsylvania, is hereby appointed by the Court to act as the agent and attorney-in-fact for the Plaintiff, Arthur S. Dixon, M.D. The said Arthur F. Silverblatt, Esquire, is authorized and directed to prepare and sign the necessary documents to cause the United States Bankruptcy Court to allow the transfer of the Plaintiff's interest in the former marital residence to the Defendant, at the Plaintiff's cost and expense. The said Arthur F. Silverblatt, Esquire, shall submit a Certification of Services rendered pursuant to this Order to this Court once the property has been transferred. The said Arthur

F. Silverblatt, Esquire, may retain an attorney, if necessary, to litigate this matter in the United States Bankruptcy Court, at a fee to be paid by the Plaintiff;

7. The real property to be conveyed to the Defendant, Pamela J. Dixon, as part of her equitable distribution, subject to ratification and approval by the United States Bankruptcy Court, is commonly known as 511 Delos Drive, Toms River, New Jersey; a more particular description of the said real estate is annexed hereto marked "Schedule A" and made a part hereof;

8. Subject to ratification and approval by the United States Bankruptcy Court, the said real property known as 511 Delos Drive, Toms River, New Jersey, shall be the sole and separate property of the Defendant, Pamela J. Dixon, as part of her equitable distribution, as provided in the Judgment of Divorce entered in this cause. The Court will, upon ratification and approval by the United States Bankruptcy Court, execute a Judicial Conveyance from the Plaintiff to the Defendant of the said property, which is more particularly described in "Schedule A" annexed hereto, authorizing and directing the Clerk of Ocean County to record the said Judicial Conveyance as a Deed to the Defendant from the Plaintiff of the said real property;

9. The Defendant, Pamela J. Dixon, shall have Judgment against the Plaintiff, Arthur S. Dixon, M.D., for arrearages of child support in the amount of $5,132.00, as of October 3, 1995, and the Defendant may take such steps as may be lawful and appropriate to collect upon the said Judgment;

10. Pursuant to *N.J.S.A.* 2A:34-23, the Defendant shall have security for the payment of future child support as follows:

a. The cash surrender value accrued in Northwest Mutual Life Insurance policy number 9310999, which policy is owned by Arthur S. Dixon, M.D., shall be frozen to serve as security for future payments of child support. Northwest Mutual Life Insurance Company is hereby restrained from permitting Arthur S. Dixon, M.D., to borrow against, hypothecate, or remove monies from the cash surrender value of its policy number 9310999 insuring the life of Arthur S. Dixon, M.D. The Plaintiff, Arthur S. Dixon, M.D., is restrained from borrowing against, hypothecating, or taking money out of the cash surrender value accrued with Northwest Mutual Life Insurance policy number 9310999, which policy is owned by Arthur S. Dixon, M.D.;

b. The Plaintiff's interest in realty in the Township of Coolbaugh, County of Monroe, State of Pennsylvania, described as Lot 61, Block 2102, Section 21, Arrowhead Lake Development, which is further described in "Schedule B" annexed hereto, shall be further held as security for the future payment of child support by the Plaintiff to the Defendant. The Plaintiff, Arthur S. Dixon, M.D., is restrained from selling or borrowing against his interest in that realty pending further Order of this Court;

11. The Defendant, Pamela J. Dixon, shall have Judgment against the Plaintiff in the amount of $1,000.00 for her interest in the cash surrender value of the Northwest Mutual Insurance policy, as provided in Paragraph 4

of the Judgment of Divorce between the parties and the Defendant may take such steps as may be lawful and appropriate to collect her Judgment;

12. The Plaintiff, Arthur S. Dixon, M.D., shall provide the Defendant, within fifteen (15) days, with proof that, pursuant to Paragraph 7 of the Judgment of Divorce dated August 11, 1995, the Plaintiff is maintaining a $200,000.00 face value life insurance policy upon his life, in full force and effect, and unencumbered. Upon his failure to do so, a Bench Warrant may issue for the Plaintiff's arrest on notice to the Plaintiff;

13. The Plaintiff shall sign an irrevocable letter of authority directing Northwest Mutual Insurance Company to respond fully to any inquiry made by the Defendant relating to insurance coverage upon the Plaintiff; he shall sign such letter of authority within fifteen (15) days or a Bench Warrant may issue for the Plaintiff's arrest on notice to the Plaintiff;

14. The Plaintiff, Arthur S. Dixon, M.D., is restrained from removing Phillip Dixon or Virginia Dixon from school prior to the end of any school day without the express written consent of the Defendant, Pamela J. Dixon;

15. The Toms River Regional School Board of Education is restrained from allowing the Plaintiff, Arthur S. Dixon, M.D., to remove Phillip Dixon or Virginia Dixon from school prior to the end of any school day without the express written consent of the Defendant, Pamela J. Dixon;

16. The Plaintiff is restrained from involving the minor children of the marriage in this litigation by discussing this litigation with the children;

17. The Defendant's request that the Plaintiff be directed to appropriately feed the children, Phillip Dixon and Virginia Dixon, when they are in his care, is denied;

18. The Plaintiff having failed to pay the first installment of counsel fees, in the amount of $5,000.00, to Alan J. Cornblatt, Esquire, as required by Paragraph 3 of the Judgment of Divorce dated August 11, 1995, Alan J. Cornblatt, Esquire, shall have Judgment against the Plaintiff, Arthur S. Dixon, M.D., in the amount of $5,000.00 and may take all lawful and appropriate means to collect upon the said Judgment;

19. The Plaintiff, Arthur S. Dixon, M.D., shall pay to Alan J. Cornblatt, Esquire, for legal services rendered in connection with the Notices of Motion and Cross Notices of Motion now before the Court, the amount of $2,000.00 and Judgment is hereby entered thereon.

/s/ Thomas E. O'Brien
THOMAS E. O'BRIEN, J.S.C.

APPENDIX E

CARDUCCI & MOYLEN
ATTORNEYS AT LAW
256 MAIN STREET
P.O. BOX 430
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(908) 852-1303

TELEFAX (908) 852-2812

GARY Wm. MOYLEN, Esq.
CERTIFIED CIVIL
TRIAL ATTORNEY

OTHER LOCATIONS

22 SOUTH PARK STREET
MONTCLAIR, N.J. 07042

701 BERGEN AVENUE
JERSEY CITY, N.J. 07306

VIA TELEFAX AND REGULAR MAIL

January 4, 1995

Alan J. Cornblatt
44 Princeton Street
P.O. Box V
Bricktown, New Jersey 08723

RE: DIXON v. DIXON
DOCKET NO. FM-15-416-92

Dear Mr. Cornblatt:

This is to confirm my telephone conversation with your associate, Jayne Vogler on January 3, 1995 regarding the above matter. On that date, I received a telephone call from Dr. Dixon, who advised me that he and Mrs. Dixon have apparently reached an agreement regarding the settlement of this action as a consequence of conversations between them over the holidays. Prior to January 3, 1995,

I was unaware of any such discussions, which apparently occurred without the benefit of counsel. The outlines of the agreement, as explained to me by Dr. Dixon, are as follows:

1. The parties would have joint legal custody of the children, with Mrs. Dixon having residential responsibility. Dr. Dixon would have visitation every other weekend, as well as three weeks of vacation time in the summer and the parties would split the holidays.

2. Dr. Dixon would pay the amount of $330.00 per week as child support.

3. The parties would retain joint ownership of the marital residence until the youngest child reaches the age of eighteen. At that time, the residence would be sold and the net proceeds split evenly between the parties on a 50/50 basis. The marital residence may be sold prior to the youngest child's eighteenth birthday at the discretion of the defendant.

/s/ A.D.

/s/ P.D.

/s/ Pamela Jane Dixon

4. No alimony would be paid.

5. Mrs. Dixon's claim for any arrearages on past child support would be eliminated in exchange for Dr. Dixon's waiving his claim for a retroactive decrease in support based upon a mistake of fact, as well as his waiving his claim for a $4,000 credit towards the 1991 income taxes.

6. Dr. Dixon would transfer title of the lot in the Poconos to Mrs. Dixon in exchange for Mrs. Dixon waiving any claim for any portion of the value of Dr. Dixon's former medical practice in New Jersey.

7. Dr. Dixon would continue to maintain life insurance in the current amount, which I believe is $100,000 for the benefit of his children. If Dr. Dixon remarries, the children Phillip and Virginia will remain 50% (one-half) beneficiaries.

/s/ A.D.

/s/ P.D.

8. Dr. Dixon would agree to pay 65% of the net college expenses for the children, which is net after any grants or scholarships. Mrs. Dixon would agree to pay 35% of the college expenses.

9. Dr. Dixon would waive any claim to a portion of Mrs. Dixon's pension.

10. The parties would remain co-trustees of the Haviland china set for the benefit of their daughter Virginia.

11. Each side would be responsible for their own counsel fees.

12. The parties would agree to divide furnishings and personal belongings between themselves.

I would appreciate it if you would review this letter with Mrs. Dixon and advise me if in fact this represents the outline of an agreement reached between the parties.

I look forward to hearing from you with respect to this matter.

Very truly yours,

/s/ Gary Wm. Moylon
Gary Wm. Moylon
GWM:smo dixon pg 90-91
cc: Dr. Arthur S. Dixon

WE AGREE TO THE ABOVE SETTLEMENT

/s/ Arthur S. Dixon
1/13/95

/s/ Pamela June Dixon
1/13/95

/s/ Pamela June Dixon

JAN 04 1995

Dear Mrs. Dixon,
Please review and may I have your advice with respect to this?

/s/ Alan J. Cornblatt, Esq.

APPENDIX F

M. N. AXINN COMPANY, PLAINTIFF-RESPONDENT, v. GIBRALTAR DEVELOPMENT, INC., DEFENDANT-APPELLANT.

Superior Court of New Jersey
Appellate Division

Argued June 3, 1957 – Decided June 21, 1957.

SYNOPSIS

Action by building material supplier against building owner on its written guarantee of payment for materials supplied to owner's contractor. The Superior Court, Law Division, entered judgment in favor of supplier and owner appealed. The Superior Court, Appellate Division, Goldmann, S.J.A.D., held that supplier was not barred from asserting its claim against building owner under owner's guarantee of contractor's account on any theory of *res judicata,* even though it failed to assert such claim as a counterclaim in an interpleader suit brought by building owner naming supplier as a defendant.

Judgment affirmed.

1. Judgment 585(4)

Although counterclaims against a plaintiff are permissible in an interpleader suit, they are not thereafter barred for failure to assert them in that action, even if liquidated, or capable of being ascertained by calculation.

2. Judgment 585(4)

A building material supplier was not barred from asserting its claim against building owner under owner's guarantee of contractor's account on any theory of *res*

judicata, even though it failed to assert such claim as a counterclaim in an interpleader suit brought by building owner naming supplier as a defendant. *R. R.* 4:13-1; *N. J. S.* 2*A*:15-48, *N. J. S. A.*

3. Guaranty 23

Where building material supplier received a letter of guarantee of a contractor's account from building owner, and based on such letter entered into a contract with contractor to supply it with materials, such agreement was complete, and therefore a subsequent agreement between supplier and owner to incorporate another condition into the guarantee agreement pertaining to furnishing of duplicate invoices to building owner, was without consideration, and not binding upon supplier.

4. Contracts 237(1)

A subsequent agreement, if it is to impose the obligation of a contract, must rest upon a new and independent consideration.

5. Appeal and error 837(1)

Although law of New York was not pleaded under Uniform Judicial Notice of Foreign Law Act, or mentioned in trial court, the Superior Court, Appellate Division, might, under that Act inform itself of such laws in such manner as it might deem proper. *N.J.S.* 2A:82-27, 28, *N.J.S.A.*

6. EVIDENCE 35

The Uniform Judicial Notice of Foreign Law Act is remedial and should be liberally interpreted. *N.J.S.* 2*A*:82-27, 28, *N.J.S.A.*

7. Contracts 145

A contract arising from use of the mails is deemed to be entered into where the offeree posts his acceptance.

8. Appeal and error 169

A point not urged below will normally not be permitted to be made on appeal except where a question of public policy or jurisdiction is involved.

9. Appeal and error 173(1)

Where, in an action by building supplier against building owner who guaranteed contractor's account, consideration of a defense of building owner not raised below, might result in unjust enrichment of building owner, and an unjust result, Superior Court, Appellate Division, under such circumstances, would refuse to exercise its discretion under the original jurisdiction rule, and would refuse to consider such point. *R. R.* 1:5-4.

* * *

APPENDIX G

ACMS APPELLATE DIVISION OF NEW JERSEY
CASE SUMMARY

REQUEST-DATE: 01/17/1996
REQUESTOR-ID: JUKFS1
PAGE:

DOCKET #: A 002433 95T1
AM NBR:
CASE MGR: TEAM 1/609-292-6186
L/C NBR: FM-15-416-92
L/C JUDGE: O'BRIEN
COUNTY: OCEAN
DECISION: 11 09 1995
CASP:
C/R:

TITLE: ARTHUR S DIXON VS PAMELA DIXON

CASE TYPE: CIVIL IMPOUND: NO

CASE FILING DATE: 12 04 1995
TRANSCRIPT DATE: 02 04 1996 DUE
THOMAS APPELLANT BRIEF DATE:
RESPONDENT BRIEF DATE:

FINAL REVIEW DATE:

OPEN MOTION

WAIVER CALENDAR DATE: PART:
DECIDED DATE: FINAL DISP:

****

ATTORNEY SUMMARY

ATTY FIRM NAME	PTY TYPE	PTY STATUS	ATY STATUS	SUB DATE	PARTY NAME
PRO SE	AP	ACTIVE	ATY OF		DIXON
CORNBLATT	RS	ACTIVE	REC		DIXON

****

DOCUMENT LIST

DOC TYPE	DATE FILED
NOTICE OF APPEAL	12 04 1995
CASE INFO STATEM	12 04 1995

FILING PARTY	ATTY/FIRM
DIXON, ARTHUR S	PRO SE
DIXON, ARTHUR S	PRO SE

****

MOTION SUMMARY LIST

MOTION #	MOTION TYPE
M002626 95	FILE OVR/BRF
	OUTCOME:
M002628 95	SUMM/DISP
	OUTCOME:

ATTY/FIRM	FILED	DECIDED
DIXON, ARTHURS	12 11 1995	
JUDGES:		
CORNBLATT, ALANJ	12 20 1995	
JUDGES:		

****

TRANSCRIPTS/SICR*

HEARING	VOL #	# CPY	DATE FILED
07 05 1995	001	00	
07 10 1995	001	00	

HEARING	VOL #	# CPY	DATE FILED
07 06 1995	001	00	
07 21 1995	001	00	

APPENDIX H

Arthur S. Dixon
89 Lake of the Pines
East Stroudsburg, Pa 18301
(717) 588-6238, 476-9799

January 15, 1996

Emille R. Cox, Clerk
Superior Court of New Jersey
Appellate Division
Hughes Justice Complex
Trenton, New Jersey 08625

RE: Arthur S. Dixon (Plaintiff-Appellant)
v. Pamela Dixon (Defendant-Respondent)
Appellate Court Docket No.: A-
On Appeal From: Superior Court of New Jersey,
Ocean County Lower Court Docket No.:
FM-15-416-92
Sat Below: Hon. Thomas E. O'Brien, J.S.C.

Dear Madam,

As counsel pro se, I filed a Notice of Appeal on December 4, 1995, and requested the customary forty-five day extension period for filing my brief and appendices.

Enclosed, in two separate packages, is one original brief and appendix in three white labeled binders in one package, and the four copies in twelve binders in a separate package. The large amount of material was necessitated by the complexity of my case and most of all by the fact that my divorce case is now nearly five years old. I have had had to include in the appendix several transcripts of motion hearings as well as other bulky documents. I have previously submitted a motion with brief to

request an extension of paging and binding as per *Rule* 2:6-7.

I have also enclosed an original and four copies of a supplemental formal Notice in which I listed all issues of appeal. I will be forwarding copies of the trial transcripts within a short time.

Yours very truly,
/s/ Arthur S. Dixon
Arthur S. Dixon,
Counsel Pro Se

Two copies of the within supplemental Notice, brief, and appendices were mailed this day to:

Alan J. Cornblatt, Esq.
44 Princeton Avenue
Brick, New Jersey 08724

I CERTIFY THAT THE FOREGOING STATEMENTS MADE BY ME ARE TRUE. I AM AWARE THAT IF ANY OF THE FOREGOING STATEMENTS MADE BY ME ARE WILLFULLY FALSE, I AM SUBJECT TO PUNISHMENT.

January 15, 1996

/s/ Arthur S. Dixon
Arthur S. Dixon
Counsel Pro Se

APPENDIX I

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
CN 006
RICHARD J. HUGHES JUSTICE COMPLEX
TRENTON, N.J. 08625

NOTICE OF DOCKETING

Date: JANUARY 17, 1996

ARTHUR S DIXON
89 LAKE OF THE PINES
EAST STROUDSBURG, PA 18301

Title: ARTHUR S DIXON VS PAMELA DIXON
Docket Number: A -002433-95T1 Appeal Filed: 12/04/95
Case Manager: TEAM / Team 1 (609) 292-6186

1. The above docket number must appear on all documents submitted.

2. Respondent shall file a case information statement within 15 days after service of the notice of appeal.

3. The time limits in R.2:6-11 must be complied with. The only exceptions are if you receive notification that the case has been selected for a settlement conference or a scheduling order is issued.

4. The appeal will be subject to dismissal without further notice for the following: (a) failure to timely file the transcript or advise the Clerk's office of any difficulty in same; (b) failure to timely file the appellant's brief.

5. If respondent's brief is not timely filed, it will be subject to suppression.

6. If oral argument is desired, it must be requested by a separate captioned paper. If so requested, notify the

Clerk's office of any period of time during which you will be unavailable.

Trial Court Docket No.: FM-15-416-92

EMILLE R. COX
CLERK OF THE
APPELLATE DIVISION

cc:
SUPERVISOR
COURT REPORTING - OCEAN COUNTY
ALAN J CORNBLATT ESQ.-

APPENDIX J

Arthur S. Dixon, M.D.
Counsel Pro Se
89 Lake of the Pines
East Stroudsburg, PA 18301
(717) 588-6238, 476-9799

SUPREME COURT OF NEW JERSEY

Docket No. _____
App. Div. # A-002433-95T1
Arthur S. Dixon v. Pamela Dixon

March 18, 1996

Clerk of the Supreme Court
Richard J. Hughes Justice Complex
CN-970
Trenton, New Jersey 08625

To The Honorable Supreme Court:

This letter brief is submitted pursuant to *R.*2:2-1(a)(1) in support of the within application by Plaintiff-Appellant Arthur S. Dixon to appeal, on Constitutional grounds, the February 5, 1996 orders of the Superior Court, Appellate Division on Motion No. 002628-95 filed by defendant-respondent for summary disposition and on Motion No. M-002626-95 filed by plaintiff-appellant to file an overlength brief.

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PROCEDURAL HISTORY

A full Procedural History, as submitted in plaintiff-appellant's brief in support of appeal, was also submitted as an appendix to plaintiff's motion to the Appellate Division requesting an extension of paging and binding, and is herein submitted with this motion, Exhibit 'B', Pa10 (10a).

September 26, 1991 – Plaintiff files for divorce in the Superior Court of New Jersey, Ocean County, on the grounds of extreme cruelty.

August 19, 1992 – Defendant attempts to prevent plaintiff from moving out of state, attempt fails.

November 13, 1992 – Hon. Frank Buczynski rules that henceforth plaintiff will not be entitled to a *"Lepis"* decrease in support for decreased future income.

February 24, 1993 – Leave to appeal the above interlocutory Order is requested and subsequently denied.

June 22, 1993 – Judge Buczynski accepts undocumented false income information for defendant presented off the record in chambers by defendant's attorney to determine later that day child support during a motion hearing in court.

July 8, 1993 – A Restraining Order is issued against defendant for interfering with plaintiff's visitation by spitting in his face and using his four year old daughter to ridicule him without her knowledge.

September 17, 1993 – Defendant's attempt to obtain plaintiff's employers' personal tax records is refused.

October 13, 1993 – Because defendant's attorney had submitted an intentionally false proposed form of Order that was signed, Judge Buczynski *sua sponte* orders a hearing after plaintiff objects.

January 14, 1994 and **February 10, 1994** – Two hearings are required for defendant's attempt, despite having herself counter-filed for divorce in New Jersey, to prevent plaintiff from obtaining a no-fault divorce in Pennsylvania, although said divorce would not affect financial or custodial issues. Defendant's motion is refused.

February 28, 1994 – Plaintiff receives divorce in Pennsylvania.

December 12, 1994 – Plaintiff, now having paid $ 30,000 in attorney's fees and $ 16,000 in debt while paying support, has his bankruptcy plan approved after income falls 25% in 1993.

May 19, 1995 – Plaintiff attempts to have primary divorce settlement agreement enforced. A plenary hearing is deemed necessary, but a trial is ordered instead.

July 5, July 6, July 10, July 21, July 24, and **July 25, 1995** – The trial is held, a decision on the plenary hearing is never reached.

October 20, 1995 – A Motion for Reconsideration, filed by plaintiff who is now pro se, on grounds of judicial prejudice, coercion and duress, and the *M.N. Axinn Co. v. Gibraltor Development, Inc.* case, is heard and denied. Judge O'Brien also issues a Restraining Order against the Toms River Schools and orders that plaintiff be deprived of his constitutional right of free speech and power of attorney.

December 4, 1995 – Plaintiff files a Notice of Appeal with the Appellate Division and requests the customary forty-five day extension period for filing his brief and appendices.

December 11, 1995 – Plaintiff's motion for filing an over-length brief is recieved [sic] for filing by certified mail by the Clerk of the Appellate Division.

December 16, 1995 – A motion for summary disposition from defendant and dated this day is sent the following day to plaintiff.

December 26, 1995 – Plaintiff's responsive brief to defendant's cross motion is received by the Appellate Division.

January 16, 1996 – Plaintiff's brief and appendices are received by the Appellate Division.

January 24, 1996 – Both plaintiff's motion for an extension of paging and binding filed December 11, 1995 and defendant's cross motion for summary disposition and plaintiff's responsive brief go out to the Court for adjudication. Not submitted to the Court is a letter from defendant to the Appellate Division dated January 10, 1996 and plaintiff's responsive brief to that letter dated January 26, 1996.

February 5, 1996 – Plaintiff's motion to file an overlength brief is denied and defendant's cross motion for summary disposition is granted.

February 7, 1996 – Plaintiff's motion for a Stay of the trial court's Orders (the motion was filed with the trial court on November 28, 1995 but not heard and denied by Judge O'Brien until January 12, 1996) is received by the Appellate Division.

February 13, 1996 – The trial transcripts are submitted within thirty days of having filed the brief as stipulated.

STATEMENT OF FACTS

Because defendant's attorney, while unceasingly filing harassing motions against plaintiff, had adamantly refused to discuss a settlement with plaintiff's attorney, defendant did, although she had been paying no legal fees herself since a retainer, contact plaintiff herself independently of her attorney in December, 1994 for the purposes of negotiating a divorce settlement contract. Defendant listed her demands and after some negotiation, an agreement was reached. Plaintiff's income from a medical practice varied greatly. In 1993, it was $ 73,000, in

1994 his salary and bonuses for the first three quarters at the time of negotiation was $ 120,000, and for the entire year turned out to be over $ 130,000, and in 1995 was $ 115,000. Plaintiff's base salary before (possible) quarterly bonuses was $ 104,000 and when asked if he made over $ 100,000, plaintiff said yes.

A letter incorporating the terms of agreement was faxed to defendant's attorney and on that same day, below a date stamped Jan. 04, 1995 appeared a handwritten note signed by Alan J. Cornblatt, Esq. (Exhibit 'B', Pa38-39 [38a-39a]). *Defendant's attorney committed perjury* by stating at trial in lieu of sworn testimony under subpoena, *in direct contradiction to documented hearing transcript statements* two months earlier, that he had never seen the letter (Exhibit 'F').

On January 13, 1995, under the handwritten statement "We agree to the above settlement", the plaintiff and defendant signed and dated the agreement. Plaintiff has been attempting to enforce the contract ever since.

LEGAL ARGUMENT

POINT I

PLAINTIFF WAS DENIED DUE PROCESS GUARANTEED BY THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES BY BEING DENIED ACCESS TO THE COURTS BY THE APPELLATE DIVISION

The second most significant, and **"substantial"**, Constitutional right that distinguishes the United States of

America from the tyranny of oligarchies and dictatorships, next to voters' rights, is the Constitutional guarantee to its citizens of "access to the courts", promulgated in the due process clauses of both the Fifth and Fourteenth Amendments.

*R.*2:2-3.(a), in the 1996 Edition of the *Rules Governing The Courts of the State of New Jersey,* states:

> "Appeals to the Appellate Division from Final Judgments, Decisions, Actions and from Rules; Tax Court *As of Right* (1) from final judgments of the Superior Court trial divisions . . . ".

Defendant-respondent filed a cross motion for summary disposition under *R.*2:8-3(b).

*R.*2:8-3(b) states:

"Appellate Division. Any party to an appeal may move the Appellate Division for summary disposition in accordance with R.2:8-1(a). ***Such motion shall demonstrate that the issues on appeal do not require further briefs or full record.***" (emphasis added).

Defendant, in her cross motion for summary disposition (Exhibit 'C'), did not even "attempt to claim", much less "demonstrate" that the issues on appeal did not require further briefs. In defendant's brief in support of her cross motion (Db8, Exhibit 'C'), she on the fifth and sixth lines cites plaintiff's brief, which was *not a brief in support of appeal* but a brief in support of plaintiff's motion requesting an extension of paging and binding!

Plaintiff's Civil Case Information Statement, the second page following the Notice of Appeal of Exhibit 'A' of the attached appendix to this brief, states in the bottom

section of the front page under " . . . List the Proposed Issues . . . ":

> "I. "A subsequent (contract) agreement, if it is to impose the obligation of a contract, must rest upon a new and independent consideration.", cited in West's N.J. Digest, 5NJD-11 referring to *M.N. Axinn Co. v. Gibraltor Development, Inc.*, 133 A.2d 341, 45 N.J. Super. 523. Plaintiff received no consideration in 2° divorce settlement contract signed under duress, and has no recollection of unexplained oral waiver (no written waiver exists) on 7/25/95. Notwithstanding unremembered oral waiver, *M.N. Axinn Co. v. Gibraltor Development Co.* still stands regardless. Lower Court erred in disregarding this established case law.
>
> II. The lower Court erred in not affirming the 1° divorce settlement agreement.
>
> III. Plaintiff properly made a Motion for Reconsideration under R. 4:49, lower Court erred in deciding that said Motion was judged to have been made pursuant to R. 4:50.
>
> IV.,V., etc. Duress, Prejudice, etc."

The **"etc.'s"** above clearly indicate that there are further issues to be raised in plaintiff's brief.

In plaintiff's motion to file an overlength brief (Exhibit 'B'), plaintiff does not present any legal arguments except as pertains to defendant's "bad faith", which was a legal issue under appeal since *Williams v. Williams*, 59 N.J. 229, used universally to determine the awards of counsel fees, stipulates that good faith (or conversely bad faith) is a determining factor.

In plaintiff's responsive brief to defendant's cross motion for summary disposition, plaintiff specifically addresses the dictum of *R.*2:3(b) ***"Such motion (for summary disposition) shall demonstrate that the issues on appeal do not require further briefs or full record."*** Beginning with the last paragraph of Pb15, Exhibit 'D' of the enclosed appendix, plaintiff outlined for the Appellate Division the finished or "perfected" arguments that would be raised when he submitted his letter-brief in support of his appeal:

"Plaintiff, in his letter-brief to the Court, will submit a detailed affidavit (herein submitted, Pa15 of Exhibit 'F') **in regard to the fact that he was unaware of any "waiver" that had been foisted upon him by defendant's attorney through coercion and duress. Moreover, plaintiff will present legal arguments that under *M.N. Axinn Co. v. Gilbrator Development, Inc.*, 133 A.2d 341, 45 N.J. Super. 523, because there is *no consideration for the plaintiff in the secondary contract as opposed to the primary contract*, the validity of the primary divorce settlement stands irregardless of defendant's attorney's oral "waiver trap". Plaintiff will also present legal arguments that the lower Court was mistaken in totally *ignoring* the *M.N. Axinn* case and other case precedents and principles of contract law in making his decisions on October 20, 1995.**

Other mistakes of jurisprudence will be presented in plaintiff's letter-brief in support of his Appeal. These include Judge O'Brien's *"lying"* regarding substantial case facts causing harm to the plaintiff's case and thus constituting "Malice and Ill Will", Judge O'Brien's misinterpretation of *Pascale v. Pascale* as regards plaintiff

picking up, with their teachers' approval, his children from school a couple of hours early for visitation as had been their customary practice before Judge O'Brien forbade it in a Restraining Order against the Toms River Schools and Judge O'Brien's unconstitutional deprivation of plaintiff's right of free speech under First Amendment protection and plaintiff's inalienable right, being of sound mind and body, of "power of attorney".

Throughout the *Rules Governing the Courts*, there are "appeal-perfection requirements" that stipulate that an appellant be given a certain length of time to "perfect" his appeal. The Appellate Division's granting of defendant's motion, made before the plaintiff-appellant had filed his brief, deprived plaintiff of his Constitutional right under the Fifth and Fourteenth Amendments to "access to the Courts" and his Appeal "as of right" from a final trial court judgment.

For instance, in defendant's cross motion for summary disposition, defendant cited the *Baldasarre v. Butler* decision, 254 N.J. Super. 502, 521 (App.Div., 1991) in an attempt to insinuate that plaintiff had been guilty of fraud (Db8-9, Exhibit 'C'). Plaintiff effectively refuted this argument (Exhibit 'I') in his brief, but the Appellate Division never considered plaintiff's pleadings.

A summary of plaintiff's legal arguments for appeal, many never raised until plaintiff's submission of his letter-brief in support of appeal on January 16, 1996, is herein submitted as Exhibit 'H', plaintiff's supplemental formal and comprehensive Notice of Appeal and letter-brief introduction with Table of Contents listing specific Legal Arguments.

The *second* circumstance in this case that deprived plaintiff of his Constitutional right to access to the courts and an appeal as of right was the Appellate Division's inequitable delay in considering plaintiff's motion for an extension of paging and binding under *R.*2:6-7 (the Order denying this request along with the Order granting defendant's cross motion are submitted together in Exhibit 'G').

Submitted as Exhibit 'P' is page 11 of the *Appellate Division Practice Checklist.* The second sentence of paragraph #7 of the section *Contents of Brief and Appendix* states:

"If a motion for extension of paging is made, it should be filed before and not after an overlength brief has been prepared."

Plaintiff, with the customary extension period granted upon request of 45 days to file his brief and appendices after having filed his Notice of Appeal on December 4, 1995, was afforded until January 18, 1996 to file his brief.

Plaintiff filed (received by Clerk by Certified Mail) his motion to file an overlength brief (Exhibit 'B') on December 11, 1995, *five and a half weeks* before the deadline to submit his brief.

As Exhibit 'B' details, the motion was necessary because the divorce case was five years old, plaintiff having filed for divorce in September, 1991, and because of all the "bad faith" litigation plaintiff had been subjected to and because defendant's attorney, up until

defendant signed a divorce settlement agreement on January 13, 1995, had consistently refused to respond to requests for settlement negotiations.

Plaintiff correctly surmised that "bad faith" would be an important issue regarding attorney's fees, not only as regarded the secondary divorce settlement contract in the trial Court but also Appellate Division litigation fees (Exhibit 'M' is defendant's Notice of Motion to the Appellate Division for counsel fees and Exhibit 'N' is plaintiff's letter response).

Even being as concise as possible, plaintiff was aware that it would not be possible to detail and document five years of bad faith, capped by defendant's attorney's perjury before the trial Court judge under oath (Exhibit 'F'), and effectively present his twelve legal arguments (Exhibit 'H') within the proscribed number of pages under R.2:6-7.

Exhibit 'N' is the undated notice of filing superimposed on its envelope with the stamped date of February 24, 1996 (the date of mailing of the Notice of Motion was February 14, 1996).

Plaintiff-counsel pro se received no notice regarding the filing of any of motions to the Appellate Division.

Plaintiff reasonably concluded that the previous cited instructions of the *Appellate Division Practice Checklist* meant that if he submitted his request for an overlength brief early as instructed, he would not be denied his Constitutional right of appeal even if his motion was denied, because he would still have time, say in the space

of two weeks, to reformulate his finished brief into an abridged version.

By not considering plaintiff's motion until after he filing period had expired-January 24, 1996 (date Motion No. M-002626-95 submitted to Court as indicated on February 5, 1996 Order, Exhibit 'G'), the Appellate Division unfairly, and against the interest of justice, denied plaintiff his Fifth and Fourteenth Amendment guarantees of due process through access to the courts.

The Appellate Division *could have invoked Rule 2:6-9* for an Inadequate Appendix or Brief and have directed "the filing, within a fixed time, of a new appendix or brief", but it failed to do so, reulting [sic] in plaintiff losing his Constitutionally and State guaranteed ability to Appeal "As of Right".

LEGAL ARGUMENT
POINT II

SUBSTANTIAL CONSTITUTIONAL ISSUES, INCLUDING THE TRIAL COURT'S *ABROGATION OF THE SEPARATION OF POWERS,* AND ITS ***EXPLICIT*** *DENIAL OF* BASIC CONSTITUTIONAL ***FIRST*** *AMENDMENT RIGHTS* AND *RIGHT OF LIBERTY TO CONTRACT,* AS WELL AS THE ISSUE OF DENIAL OF DUE PROCESS IN THE TRIAL COURT, REMAIN

UNRESOLVED IN THIS CASE BY THE FAILURE OF THE APPELLATE DIVISION TO ADDRESS THESE CONSTITUTIONAL ISSUES OF INALIENABLE **INDIVIDUAL** RIGHTS.

The final Orders of the trial Court which were submitted with plaintiff's Notice of Appeal and Civil Case

Information Statement are attached following these moving papers in Exhibit 'A'.

There exists three separate final Court Orders because plaintiff filed a Motion for Reconsideration in the trial Court, and from that hearing on October 20, 1995 there were issued two Orders signed November 8 and November 9, 1995.

The trial Court Order of November 8, 1995 in Exhibit 'A' is a Restraining Order against the Toms River Schools.

Some background as to the custodial issues pertaining to this Order can be appreciated by referring to Exhibit 'J', Legal Argument IX of plaintiff's brief in support of his appeal brought before the Appellate Division (The entire legal brief and appendices in support of plaintiff's appeal is not herein attached both because it is so voluminous and also it is not required because it was never recognized by the Appellate Division, permission to file an overlength brief having been denied; it is understood therefore that legal arguments from excerpts of the brief are undocumented because they are not accompanied by cited references in the appendix.).

In the C.A.D.C. (1977), it was observed:

> "In deference to the fundamental constitutional principle of separation of powers, the judiciary must take special care to avoid intruding into a constitutionally delineated prerogative of the legislative branch." U.S.C.A. Const. art. 1, § 5, cl. 2 *Harrington v. Bush*, 553 F.2d 190, 180 U.S. App. D.C. 45

And it was commented further in the C.A. Ill. (1976):

> "Rationale for limiting judicial interference in operation of other branches of government is that court will be required to make decisions over which it has no particular competence, and thereby impede orderly conduct of governmental affairs."
>
> Illinois Migrant Council v. Pilliod, 540 F.2d 1062, rehearing 548 F.2d 715

This last judgment is particularly germane because Judge O'Brien issued the Order because he deemed, contrary to the opinions of plaintiff's son Phillip's fifth grade teacher and daughter Virginia's first grade teacher, that it was inappropriate and objectionable that children who had exemplary attendance and performance records should be released from school early twice a month so that they could have quality visitation time with their father and avoid a five hour rush-hour traffic jam through one hundred miles of the most densely populated sections of New Jersey.

In N.J. 1973 it is written:

> "The Constitution places ultimate responsibility on the state for thorough and efficient education system.
>
> Const. 1947, Art. VIII, § I, par. 1."
>
> *Robinson v. Cahill*, 303 A.2d 273, 62 N.J. 473, reargument 306 A.2d 65, 63 N.J. 196, certiorari denied *Dickey v. Robinson*, 94 S.Ct. 292, 414 U.S. 976, 38 L.Ed.2d 219

And from the same above cited case (287 A.2d 187, 118 N.J. Super. 223, supplemented 289 A.2d 569, 119 N.J. Super. 40), it was promulgated in **N.J.Super.L. 1972**:

> "Purpose of education clause of New Jersey Constitution relating to legislative maintenance and support of a thorough and efficient system of free public schools is to make it a state ***legislative obligation*** (emphasis added) to provide a thorough education for all pupils whereever [sic] located . . . ".

It is therefore clear beyond doubt that by issuing a Restraining Order against the Toms River Schools, Judge O'Brien violated the principle of separation of powers of the Constitution of the United States of America.

In the second Order issuing from the Court proceedings of October 20, 1995, signed November 9, 1995 (Exhibit 'A'), there is not one but two instances in which Judge O'Brien flagrantly violates the Constitution of the United States.

Order #16 of the November 9, 1995 trial Court Order states: "The plaintiff is restrained from involving the minor children of the marriage in this litigation by discussing this litigation with the children".

Exhibit 'K' is Legal Argument IX of plaintiff's brief in support of his appeal, said brief having been stricken due to its length. It summarizes, however, the circumstances that led to Judge O'Brien's Order, and it was referred to in plaintiff's responsive brief (Exhibit 'D') that was not suppressed. It points out that because of a six-line objection in defendant's brief, with absolutely no proof offered that plaintiff's conversation with his children was in any way not beneficial, and with plaintiff because of distance (living in another state) and professional obligations unable to attend the hearing, Judge O'Brien, without

hearing testimony, blithely ordered the denial of plaintiff's First Amendment Rights, as if the Constitution were nothing in his Court but a meaningless piece of paper.

From the U.S.C.A.Const. Amend. 1 **(U.S.Ark. 1979)**:

"The First Amendment protects the right of an individual to speak freely, to advocate ideas, to associate with others . . . , government is prohibited from infringing upon these guarantees either by prohibition against certain forms of advocacy or by imposing sanctions for expression of particular views it opposes."

Smith v. Arkansas State Highway Emp., Local 1315,
99 S.Ct. 1826, 441 U.S. 463, 60 L.Ed.2d 360.

In the D.C.Utah 1982 it was noted:

"Minors are entitled to a significant measure of First Amendment protection".

And, from the **D.C.Ala. 1981**:

"Not all speech is protected by the First Amendment; the state may regulate the advocacy of illegal conduct, defamation, speech which invades privacy, obscene speech, and fighting words or other offensive language."

Anderson v. Edwards, 505 F.Supp. 1043.

Obviously, talking to his eleven year old son, i.e. telling him that he believed a particular trial judge was acting unfairly, is neither advocacy of illegal conduct, an invasion of privacy, defamation (in the legal sense), obscene speech or fighting words.

Finally, from **U.S.Mo. 1981** it is noted:

"The most exacting scrutiny is required in cases where the state undertakes to regulate speech on the basis of its content."

Widmar v. Vincent, 102 S.Ct. 269, 454 U.S. 263, 70 L.Ed.2d 440.

Order #6 of the November 9, 1995 trial Court Order states: "Arthur F. Silverblatt, Esquire . . . is hereby appointed by the Court to act as the agent and attorney-in-fact for the Plaintiff, Arthur S. Dixon, M.D."

Corpus Juris Secundum states that, in regard to "Liberty to Contract" (§ 491): "The general rule is that the making of contracts shall be free of governmental interference."

U.S.-*Kealey Pharmacy & Home Care Service, Inc. v. Walgreen Co.*, D.C. Wis., 539 F.Supp. 1357.

and that: "It is a matter of great public concern that the freedom of contract be not lightly interfered with".

U.S.-*Steele v. Drummond, Ga.*, 48 S.Ct. 53, 275 U.S. 199, 72 L.Ed. 238.

The liberty of contract "is protected against infringement by its incorporation into the federal and various state constitutions".

U.S.-*Doherty v. McAuliffe*, D.C.Mass., 7 F.Supp. 49

"In such constitutions, the right is included ordinarily within the **constitutional guarantee of due process of law . . .** ".

Also, "Liberty to contract is embraced within the constitutional guarantees of liberty"

> N.Y.-*U.S. Mortgage & Trust Co. v. Ruggles*, 179 N.E. 250, 258 N.Y. 32, 79 A.L.R. 802.

Finally, New Jersey Courts have also determined that the liberty to contract is "basic, fundamental, and highly important".

> N.J.-*Abel Holding Co., v. American Dist. Tel. Co.*, 350 A.2d 292, 138 N.J. Super. 137, affirmed 371 A.2d 111, 147 N.J. Super. 263.

It is therefore abundantly clear, from the above reminders of one of our guaranteed rights in the Constitution of our country, that Judge O'Brien's Order of a contractual agreement on behalf of plaintiff yet vehemently opposed by plaintiff and totally against plaintiff's will is yet another example of Judge O'Brien's disdainful regard for the Constitution of the United States and the protection of individual rights guaranteed within it.

The Supreme Court of New Jersey, because it purposes to uphold the Constitution, must remand this case to the Appellate Division, in the interest of justice, so that the issues of the trial court's abridgment of Constitutional rights, by no means "without merit", may be seriously addressed and given a fair hearing.

It should be also noted that there were issues of substantial Constitutional import raised before the trial Court, especially as regards "due process" guarantees in the Fifth and Fourteenth Amendments.

Judicial prejudice, if affirmed, would certainly constitute interference with plaintiff's right to obtain due process, Plaintiff documented for the Appellate Division, both in plaintiff's motion for an extension of paging and binding (Exhibit 'B') and in his brief in support of his Appeal, through citations of specific portions of Court transcripts that the trial Court judge had deliberately and intentionally lied about the facts of the case in a manner that hurt plaintiff's case.

The Appellate Division was specifically asked, in plaintiff's first Legal Argument (Exhibit 'Q'), to determine whether the trial Court judge's "lying", to the detriment of plaintiff's case, constituted "malice and ill will", a prerequisite (*Freudenreich v. Mayor and Council of Borough of Fairview,* 114 N.J.L. 290, 176, A.162; 3 Comp.St. 1910, p. 4121 § 224, N.J.S.A. 2A:15-49) in determining judicial prejudice.

The Appellate Division was also asked to evaluate the appropriateness of applying the judicial definitions of coercion and duress to the circumstances of plaintiff's condition leading to the signing of the secondary divorce settlement contract.

No less of an authority than *Corpus Juris Secundum* (16D C.J.S.) states under the subject of Constitutional Law, § 1141. Access to Courts, pages 9-10, that "Settlements that are forced and not agreed to by the parties are violative of due process."

The issues of coercion and duress, as well as the issue of judicial prejudice, were, apart from plaintiff's brief in support of the appeal, brought to the Appellate Division's attention in plaintiff's responsive brief to defendant's

cross motion for summary disposition, by means of submission in the appendix of the initial Motion for Reconsideration (Pa2), plaintiff's supplemental brief (Pa28) and Certification (Pa72) for the same motion, filed before the trial Court (Exhibit 'D' of this brief).

Specifically, in plaintiff's supplemental brief, Pa53-54 of Exhibit 'D' herein attached, plaintiff argued that the therein described succession of events created a "degree of coercion" greater than could be withstood by "the standard of resistance . . . of a man of ordinary resistance." (U.S.-*Wiget v. Rockwood*, C.C.A.Minn., 69 F.2d 326). Plaintiff's narration of the prolonged duress that he was subjected to, due to the $24,000 in legal fees in addition to the $60,000 he had already paid, as well as the professional demands made on him while trying to attend a trial of daily harassment on the witness stand out of state, is set forth in plaintiff's Affidavit, Pa 15-20 of the attached Exhibit 'F'. The greatest element of coercion, cited in this Affidavit and plaintiff's supplemental brief to the trial Court, was being repeatedly threatened with being forced to pay 100% of his ex-wife's attorney's fees if he refused to settle.

CONCLUSION

There is a pervading truth in this civil action that underlies this appeal, that by law must rest upon Constitutional grounds.

That truth is that the Appellate Division's summary disposition of this case (Exhibit 'G') on grounds that it lacks merit is incorrect and grossly unfair.

Even without plaintiff's legal brief (disallowed after the filing period had elapsed as too long) and without the trial transcripts (the Appellate Division reached its decision before even having received the transcripts), it is incorrect, according to such authoritative references as *Corpus Juris Secundum*, to decide that judicial prejudice and contract nullification due to duress are legal issues without merit.

It is also incorrect, even with the limited pleadings and documentation before the Appellate Division, for that body to conclude that there was insufficiency of factual evidence to support these legal claims.

The burden of proof on the plaintiff in this instance was not to prove, with "reasonable" surety, that legally defined judicial prejudice or duress on the plaintiff did in fact exist. The burden of proof was to demonstrate that there was sufficient grounds for these claims. Plaintiff's appendices to Exhibit 'B', the briefs and Certification submitted to the trial Court for plaintiff's Motion for Reconsideration of the final divorce Order, do clearly present extensive claims and documentation for the existence of both duress and judicial prejudice.

For instance, in plaintiff's briefs he documents that the trial judge did suppress the admission of obviously relevant evidence (such as bank and account receivable statements as of the filing date of divorce for the evaluation of a marital asset a past medical practice).

Beyond these issues, it was entirely incorrect for the Appellate Division to rule that established principles of contract law "lacked merit". *Massar v. Massar*, 279 N.J.Super. 89, as regards the primary divorce settlement

contract (Exhibit 'R'), established that principles of contract interpretation may be applied to matrimonial agreements, and plaintiff *at length* in his brief (Pa37, Exhibit 'D') demonstrated that there was no fraud or "unconscionable inequity" that could invalidate this primary contract. This contract was *never* been found by the trial Court to be invalid and it is wrong for the Appellate Division to evade this question.

Likewise, as to the issue of "consideration" raised in his civil case information statement, plaintiff strove in his overlength brief to prove that he had received none in the secondary contract. Twelve pages alone in plaintiff's brief were used to conclusively prove this fact.

To deem, then, that plaintiff's appeal had no merit was to say that the *M.N. Axinn, Co. v. Gibraltar Development, Inc.* case had no merit. The Appellate Division wrongly ignored the judgment of this case presented in plaintiff's civil case information statement: **"A subsequent agreement, if it is to impose the obligation of a contract, must rest upon a new and independent consideration."**

This case law is the *crux* of plaintiff's appeal, and unless a decision is rendered in the context of *M.N. Axinn Co. v. Gibraltar Development, Inc.* then **justice and due process will have been denied.**

This appeal, of course, must be directed primarily, under *R.*2:2-1.(a)(1), to Constitutional issues. However, as noted in the Comment section of the *Rules*:

> "if there is a proper constitutional basis for an appeal as of right, the Court may consider all non-constitutional issues as well."

Klingman v. Lautman, 53 N.J. 517, 523 (1969); *State v. Barnes*, 54 N.J. 1, 4 (1969). Cf. Comment on *R.*2:3-4.

The Comment section under *Rule* 2:2 also notes that besides the requirement for "substantiality" of the Constitutional issues being raised (*Tidewater Oil Co. v. Mayor and Council of Carteret*, 44 N.J. 338, 341-42), the question must not have already been the subject of a concluded judicial determination (*East Windsor Mun. Util. Auth. v. Shapiro*, 57 N.J. 168 (1970).

It is herein submitted that *any* unlawful infringement by the State, whether by the executive, legislative, or judicial branch, on an individual's guaranteed Constitutional rights, is a "substantial" issue for the Courts.

Our society, our country, is made up of a sum of individuals, and any unlawful curtailment of an individual's rights endangers, like a slow growing cancer, the freedom of the entire society and country. The framers of our Constitution would be "appalled" if an unconstitutional infringement on an individual's inalienable rights were not considered "substantial".

Also, although it is self-evident that, this being a case appealed by a pro se litigant, that plaintiff-appellant is unfamiliar with Constitutional Law, there exist unique aspects to this case that undoubtably have not been the subject of prior judicial decisions.

First, the determination that judicial prejudice against appellant in the trial Court deprived appellant of "due process" as delineated in the due process clause of the Fifth and Fourteenth Amendments.

Second, it would be believed that the question of a Superior Court judge's authority to issue a Restraining Order against a school district under the separation of powers doctrine of the Constitution has never before been judicially addressed.

Third, while there have been numerous lawsuits over the right of free speech under the First Amendment, this "inalienable right" is so extremely important in our Constitution that any new infringement that has not before been specifically addressed, in this case plaintiff's right to discuss litigation with his children, needs to be adjudicated individually.

Fourth, it is believed that the question of judicial interference with a individual's "liberty to Contract" and power of attorney has not previously been addressed in case law under the Constitutional guarantees of due process and liberty.

Fifth, it would also seem probable that the issues of the inequitable allowance of a motion for summary disposition before appellant's brief has been perfected and before trial transcripts received, coupled with the unfair application of a relatively minor procedural rule for paging, depriving plaintiff due process as regards access to courts, have not been addressed by the Courts.

In summary, defendant's cross motion for summary disposition should not have been allowed because it **violated *R.*2:2-3(b)**: *Such motion shall demonstrate that the issues on appeal do not require further briefs or full record."*

Furthermore, the Appellate Division treated the plaintiff unfairly who had, in good faith and according to

the instructions given him, filed then his motion for an overlength brief thirty-eight (38) days before the deadline for submitting his brief and appendices. The Appellate Division, while plaintiff-counsel pro se spent over a hundred hours of his own time diligently completing his brief and copies, unfairly waited over one month, beyond the filing deadline, to deny plaintiff's request, thereby denying him access to the courts and due process.

It is therefore requested that the New Jersey Supreme Court, on Constitutional grounds, *remand* the case back to the Appellate Division because the Appellate Division failed to process in a timely fashion plaintiff's request for an over-length brief, and because defendant's cross motion should not have been granted until plaintiff's appeal was perfected and the trial transcripts received the aforesaid occurrences having denied plaintiff of due process.

APPENDIX K

(SEAL)

1996 Edition
Rules Governing The Courts
OF THE
State of New Jersey

WITH COMMENTS AND ANNOTATIONS

by

SYLVIA B. PRESSLER

AMENDMENTS TO AUGUST 1, 1995

RULES GOVERNING APPELLATE PRACTICE

2:15-15. Prosecution by Attorney General or Designated Attorney.
2:15-16. Record and Papers of Committee to be Privileged.
2:15-17. No Costs.
2:15-18. Effect of Resignation.
2:15-19. Challenges to the Proceedings.
2:15-20. Confidentiality.

Part II

RULES GOVERNING APPELLATE PRACTICE IN THE SUPREME COURT AND THE APPELLATE DIVISION OF THE SUPERIOR COURT

RULE 2:1. SCOPE

Unless otherwise stated, the rules in Part II govern

the practice and procedure in the Supreme Court and the Appellate Division of the Superior Court.

Note: Source – R.R. 2:1-10.

COMMENT

One of the major organizational innovations of the 1969 revision was this single Part II governing appellate practice in both the Supreme Court (formerly Part I) and the Appellate Division (formerly Part II) and the elimination from the appellate rules section of those rules governing appeals to the trial courts. As to those appeals see R. 3:24 and 3:25 (appeals to the county court from courts of limited criminal jurisdiction), R. 4:69 (actions in lieu of prerogative writs required to be commenced in the Superior Court, Law Division), and R. 4:74 (appeals to the county court in designated civil actions and administrative matters).

RULE 2:2. APPEALABLE JUDGMENTS AND DETERMINATIONS

2:2-1. Appeals to the Supreme Court from Final Judgments

(a) As of Right. Appeals may be taken to the Supreme Court from final judgments as of right: (1) in cases determined by the Appellate Division involving a substantial question arising under the Constitution of the United States or this State; (2) in cases where, and with regard to those issues as to which, there is a dissent in the Appellate Division; (3) directly from the trial courts in cases where the death penalty has been

imposed and in post-conviction proceedings in such cases; (4) in such cases as are provided by law.

(b) On Certification. Appeals may be taken to the Supreme Court from final judgments on certification to the Appellate Division pursuant to R. 2:12.

Note: Source – R.R. 1:2-1(a) (b) (c) (d) (e). Paragraph (a) (2) amended February 28, 1979 to be effective immediately.

COMMENT

This rule, as adopted as part of the 1969 revision, followed the constitutional mandate of N.J. Const., Art. VI, § V, para. 1 and made those changes in the source rules as noted below.

1. **Paragraph (a) (1)** of this rule, expressly requires that a constitutional question, in order to be appealable as of right, must be "substantial". The substantiality requirement, although not express in either the constitutional provision, or the source rule, had nevertheless been construed as implicit therein. See, e.g., Tidewater Oil Co. v. Mayor and Council of Carteret, 44 N.J. 338, 341-342 (1965); Colacurcio Contracting Corp. v. Weiss, 20 N.J. 258, 262 (1955). See also In re East Windsor Mun. Util. Auth. v. Shapiro, 57 N.J. 168 (1970), reiterating that the question must be substantial and not colorable and must not already have been the subject of a concluded judicial determination. And see Piscataway Assoc., Inc. v. Township of Piscataway, 73 N.J. 546, 549 (1977), further explaining that the standard of substantiality is not met where the issues " * * * involve an analysis of a particular

factual situation and application of those facts to statutory and constitutional criteria under established principles." And see e.g.

APPENDIX L

[p. 131] **Colloguy/Dixon – Direct**

* * *

practice, you know, maybe the 1990 return's going to have some relevance. I don't know care when we do it.

MR. MOYLEN: I just did it – your Honor, that's why I said focusing on the child support but also with other issues, and that's why I just wanted to have him identify the pertinent tax returns, and then we can use them on both issues. If the Court wants me to do it another way, I'll do it another way.

THE COURT: I told you before, Mr. Moylen, it's your case. I don't want to be criticized later for controlling your case. You do it however you want to do it.

MR. MOYLEN: Well, there's an objection.

THE COURT: You have $50,000 in counsel fees. Go for another 50. Let's go.

MR. CORNBLATT: P-6 is the 1990 joint tax return?

THE COURT: P-6 for identification, 1990 tax return.

BY MR. MOYLEN:

Q And –

THE COURT: Is this federal or state, sir?

THE WITNESS: Federal.

Q And could you tell me –

THE COURT: And it's a 1040 return?

MR. MOYLEN: Yes, it is, your Honor.

THE WITNESS: Yes, joint.

Q I'm going to show y u what's been marked as P-7 for identification and ask you if you can identify that?

* * *

APPENDIX M

LISTING OF ATTACHMENTS FOR
SUPPLEMENTAL LEGAL BRIEF FOR
MOTION RETURNABLE OCTOBER 20, 1995

1. September 1, 1995 letter-from plaintiff to Court Clerk stating Court Order had not been received.

2. September 5, 1995 letter-from plaintiff's prior attorney to plaintiff, acknowledging service of Court Order 9/5/95.

3. Primary Divorce Settlement Contract-Letter dated Jan. 4, 1995 to Mr. Cornblatt with provisions for settlement, signed and dated January 13, 1995 on second page.

4. Secondary Divorce Settlement Contract-Court Order signed August 11, 1995 withe [sic] "J-1" signed July 25, 1995.

5. Transcript Court Proceedings-July 24, 1995, Cross-examination of defendant regarding primary divorce contract, pages 215-222.

6. Letter from defendant's attorney Mr. Cornblatt dated July 7, 1993 citing *Hathoway v. U.S.* as supporting proportionate payment of taxes (re underpayment of defendant of joint 1991 taxes).

7. Transcript Court Proceedings-July 5, 1995 regarding Court's refusal to allow as evidence Franklin Fund Worksheet for college expenses, highlighted, Pages 120-123.

8. Transcript Court proceedings-July 24, 1995, regarding Court's refusal to allow as evidence business documents dated September 26, 1991, the date of filing for divorce to be used for evaluation as per *Scavone v. Scavone,* Pages 13-20.

9. Summary sheets of evaluation as of December 31, 1991 done by a Mr. Donovan listing assets and liabilities.

10. Dover Pediatrics Bank Account showing Cash on Hand and out standing tax payment checks as of September 26, 1991, highkighted [sic], were to have been Exhibits "P-44", "P-64" and "P-65".

11. Daily Log of Charges and Receipts ('Day Sheets') prepared by office manager Ms. Sharon Czarnecki for September 26, 1991 indicating Account Receivables about $ 6,000.00.

12. Bills for legal services indicating liability for accrued business expenses for legal bills about $ 5,000.00.

13. Franklin Fund Worksheet for College Expenses, highlighted to indicate cost for plaintiff's two children's college expense.

FRANKLIN

COLLEGE FUND ACCUMULATION WORK SHEET

If your child is now: (years of age)	15	14	13	12	11	10	9	8	7	6	5	4	3	2	1
He or she will enter college in:	3 yrs.	4 yrs.	5 yrs.	6 yrs.	7 yrs.	8 yrs.	9 yrs.	10 yrs.	11 yrs.	12 yrs.	13 yrs.	14 yrs.	15 yrs.	16 yrs.	17 yrs.
Four years* at a PUBLIC COLLEGE will cost:	$26,696	$28,297	$29,993	$31,791	$33,695	$35,713	$37,854	$40,120	$42,527	$45,075	$47,776	$50,642	$53,678	$56,896	$60,309
or at a PRIVATE COLLEGE will cost:	$48,588	$51,503	$54,590	$57,863	$61,331	$65,007	$68,904	$73,038	$77,418	$82,060	$86,983	$92,198	$97,727	$103,587	$109,799

*Approximate cost upon child's entering college for four years at a public or private college. Based on an average annual rate of inflation of 6% and average total annual expenses for the 1986-87 school year of $5,604 for a 4-year public college and $10,199 for a 4-year private college. Source: College Board

BEST AVAILABLE COPY

* * *

that type of an objection.

MR. CORNBLATT: It's very –

MR. MOYLEN: I mean, he said no not before, but I did make a calculation.

THE COURT: Let me hear the question again.

BY MR. MOYLEN:

MR. MOYLEN: The question was, Doctor, before you entered into these agreements, P-1 and P-2, did you make a calculation as to the monetary amount of what you were obligating yourself to in the college expense provision?

A Not before but after.

Q So the answer is, no, before you entered into the agreement, you did not calculate how money it was going to cost you.

A I did not calculate. I knew it would be a lot.

THE COURT: A lot. You know, the answer doesn't mean anything to anyone in the courtroom now anyway. No one knows what a lot is. No one knows how much college education's going to cost. Who knows?

Q Did you –

THE COURT: It's truly speculative. Who has any idea what it's going to cost. I don't know that it can continue on the way it's going on now. No one has the

money to pay it now. So I guess "A lot" is a good answer but who knows how much that is?

[p. 121] **Colloquy**

Q Did you at any time prepare calculations to determine what your anticipated expense would be for this?

MR. CORNBLATT: If it was done, respectfully, after this document was signed –

THE COURT: I'm going to sustain the objection because I don't know what the calculations are worth. You can't possibly know. You can't know because you don't know where the child is going to end up going to school, what the ability is. Maybe they're going to go to Ocean County College and it's going to cost – it's $2500 a year now. Maybe they're going to go to Princeton. It's $35,000. Who knows?

MR. MOYLEN: Well, Judge, the Court will never know that unless I can ask him a question. I mean, people –

THE COURT: Well, it doesn't matter what he thinks it's going to cost because you know under *Newburgh vs. Arrigo*, you don't make – and I don't say I favor that decision in view of the fact that we decide how much money we're going to come up with the week the young people matriculate to college under that case, and I think it's kind of bizarre, but it's, again, one of those difficult areas where the Court, because of the difficulty of the issue, is somewhat stymied, I'd say. But who knows? That's why *Newburgh* says you have to look at the time, where they're going to go, what kind of loans they can

get, what kind of scholarships they can get, what kind of work study they can get. You can go, as I said, from $2500 a year living [p. 122] at home to going to Boston College at $35,000 a year. It may be $135,000 by then. It may be less, because maybe, you know, some of these schools aren't going to be able to stay open because no one seems to have the money. There's no tax break. There's no anything.

And I can be honest with you. I've been in this Division a year, and I have these motions every Friday, and I haven't seen anyone yet that had any money that could cover this college education. So, you know, the calculations are worthless to me because they have no reliability. They're nothing more than speculation and conjecture because all the facts aren't in.

MR. MOYLEN: But, Judge, with all due respect, your Honor, I certainly understand and appreciate your Honor's comments, but people and institutions do do this. Calculations are provided. They can take and they have done past rates of college inflation, take that against current college cost, project that into the future to –

THE COURT: Sure. If you want to bring an actuary in here to give me that kind of calculation, but again, I say the relevance of it is insignificant. My guess is as good as anyone else's. If the split was 65/35, if it's $100,000 a year, he was going to pay $65,000. His ex-wife would pay $35,000. If it was going to be $5,000 a year, then it's different, right. But what kind of calculation are you going [p. 123] to give me? You're going to tell me that in – and an actuary is not going to be any good to us till

they have the facts, unless you know it's Boston College or Ocean County College. Where are you going?

MR. MOYLEN: What these actuaries do, Judge, is they take an upper limit and a lower limit. You take like a Princeton or something like that, which is one of the most expensive schools you can get today –

THE COURT: Well, then you'd have to bring the actuary in here and let the actuary go through the calculations, and Mr. Cornblatt can cross-examine him, but this man's not an expert in the calculation of college costs.

MR. CORNBLATT: And what he did after –

THE COURT: He's a medical doctor. What can he tell us about college costs?

MR. MOYLEN: I think he can tell the Court what the monetary amount he –

THE COURT: Mr. Moylen, I don't think this testimony has any value or relevance for me, so I'm to deny it.

MR. CORNBLATT: Your Honor, may I interject just for the record a further continuing objection and then I won't have to keep jumping up to make it? I understand that when Mr. Moylen asks the witness a question about the contract, he means P-1 and, I suppose, P-2. I'm not conceding that it is a contract by my not objecting to the form of the question.

* * *

DATE _____ SHEET NUMBER _____

DATE	FAMILY MEMBER	PROFESSIONAL SERVICES	CHARGE	PAID	A/R BALANCE	PREVIOUS BALANCE	NAME
9-24-91	Kevin	OV ill recheck	27 00	27 00			Correa, Kevin
"	Kara	OV ill	40 00		40 00		Stout Kara
"	Cory	OV ill & TC	52 00		91 00	39 00	Hughes Cory
"	Sarah	OV well & Hib	78 00		121 00	43 00	Cacioppi Sarah
"	Ashley	OV ill & TC	52 00		208 00	156 00	Haldeman, Ashley
"	Joey	OV ill	40 00		123 00	83 00	Hoffenpadener, Jo
"	Kimberly	OV well OPT-Pol	103 00	103 00			Beckwith, Kimb
"	Danie	OV ill	40 00	20038 00			Halber, Dan
9-25-91	Michael	OV ill	40 00		40 00		Rishel, Michael
"	Anthony	OV ill	45 00	10 00	35 00		Tavia, Anthon
"	Charles	OV well & OPT-X	78 00		156 00	78 00	Eastman, Charles
"	Samantha	ROA		30 00	800 00	830 00	Kinfack, Sama
9-31-91	Elissa	OV ill	40 00	10 00	216 00	186 00	Decker, Elissa
"	Danie	OV well & Hib	78 00		181 00	103 00	Reeder, Danie
"	Richard	OV ill	40 00	50 00	258 00	308 00	Sealander, Richa
"	Joseph	OV ill d+C	52 00		202 00	150 00	Dispenza, Joseph
"	Andrew	OV well & Immb	53 00	5 00	121 00	73 00	Mail, Andrew
"	Trevor	OV well & Hib	78 00	5 00	194 00	121 00	Mail, Trevor
"	Ali	OV well	43 00		86 00	43 00	Mohamed, Ali
"	Sarah	OV well cerebral Pal	122 00		122 00		Mohamed, Sara
"	Jeanne	OV well & Hib	78 00		931 00	853 00	Sanabria, Jean
"	Gillian	ROA		106 00	50 00	156 00	Fonzetta, Gillian
"	Blair	OV ill d+C	55 00	55 00	350	350 00	Lorenz, Blair
"	Britton	OV well OPT-Pol	103 00		103 00		Drake, Britton
"	Anthony	Pol w/u, OV & OPT	62 00		180 00	118 00	Silvestri, Antho
"	Kevin	OV well	43 00	43 00			Lorenz, Kevin
"	Jennifer	OV ill, d+C	52 00		52 00		Taylor, Jennifer
"	Alexandria	Pol w/u OV	27 00	27 00			Peden, Alexandria
"	Andrew	OV ill d+C	52 00		52 00		Wood, Andrew
"	Brandon	OV ill	40 00		40 00		Bragg, Brandon
"	Erin	OV well mmr-Pol	120 00	10 00	186 00	76 00	Benedetti, Erin
"	Sean	OV	27 00	27 00			Fishon, Sean

TOTALS						
	THIS PAGE	1760	483 65	4978	3766	
	PREVIOUS PAGE	21066	11181 54	8383	4639781	38280
	MONTH-TO-DATE	22826	11664 54	8448	4644759	42046
		Col. "A"	Col. "B-1"	Col. "B-2"	Col. "C"	Col. "D"

PROOF OF POSTING	
COL. D TOTAL	$ 3766
PLUS COL. A TOTAL	$ 1760
SUB TOTAL	$ 5526
LESS COLS. B-1 & B-2	$ 548
TOTAL LESS COL. C	= 4978

ACCOUNTS RECEIVABLE PROOF	
PREVIOUS DAY'S TOTAL	1606.32
PLUS COL. A	1760
SUB TOTAL	6366.32
LESS COLS. B-1 & B-2	548
	5818.32

ACCOUNTS RECEIVABLE PROOF	
ACCTS. REC. 1ST OF MONTH'S	3105
PLUS COL. A, MO. TO DATE	$22826
SUB TOTAL	25931
LESS B-1 & B-2 MO. TO DATE	20113
TOTAL ACCTS. REC.	5818

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DAILY LOG OF CHARGES AN

DATE _____ SHEET NUMBER _____

	DATE	FAMILY MEMBER	PROFESSIONAL SERVICES	CHARGE	CREDITS A	CREDITS B1	CREDITS B2	CREDITS C	PREVIOUS BALANCE	NAME
1	12641	Christine	Inovill	45 00	10 00			251 00	216 00	Decker, Christ
2	12791	Matthew	OV well & Hib	78 00	78 00					Saucy, Matth
3	"	Sally	OV well dm m R	106 00	106 00			37 00	37 00	Wydda, Sall
4	"	Mary Ann	OV well DPT Pol Mea	118 00	118 00					Widow, Mary
5	"	Zachary	ROA		41 18	582			47 00	Benesh, Zach
6	"	Stacy	ROA		41 18	582			47 00	Farmer, Stac
7	"	Trenor	ROA		61 20	11 80	124	1352 80	194 00	May, Trenor
8	"	Jessica	OV ill	40 00	10 00	30 00		12 00	12 00	Robitaille, Jess
9	"	Kately	OV well d mum flu	70 00				175 00	105 00	Smith, Kayly
10	"	Kyle	OV well & Hib	78 00				330 00	252 00	Barkette, Kyle
11	"	Edward	OV ill	40 00	10 00	30 00				Robertson, Edw
12	12791	Andrew	OV ill	40 00	40 00					Osborne, Andr
13	"	James	OV ill d+c	47 00	47 00					Osborne, Jam
14	"	Amanda	OV well Hib Rub.	105 00				185 00	86 00	Janssen, Aman
15	"	Edward	+C	12 00				12 00		Robertson, Edw
16	"	Jeffrey	OV ill d+c	52 00				209 00	157 00	Smith, Jeffrey
17	"	Rashad	OV ill	40 00				40 00		Stokes, Rasha
18	"	Lachelle	OV ill	40 00				40 00		Johnson, Lache
19	"	Chris	OV well Pol Mea & Mum	132 00				132 00		Welch-Lieng, Chri
20	"	Kristina	OV well & DPT	78 00				78 00		Welch-Lieng, Chr
21	"	Giselle	OV well Pol Mea Mum	122 00				162 00	40 00	Johnson, Gisel
22	"	Desiree	OV well DPT Pol	103 00	136 00				33 00	Gustafson, Des
23	"	Sheryl	OV ill	40 00				153 00	113 00	Ormond, Sher
24	"	Daniel	OV ill	40 00				143 00	103 00	Olmick, Dan
25	"	Nico	Inovwell	48 00	48 00					Stoltz, Nic
26	"	Melanie	OV ill	40 00	10 00			231 00	201 00	Stack, Melan
27	"	Mari	OV ill	40 00	10 00			261 00	231 00	Stack, Ina
28	"	(X Brian)	OV ill	40 00	40 00					Jones, Brian
29	"	(James)	OV ill	40 00				143 00	103 00	Peale, (Jame
30	12891	Jean	Inovwell	43 00	43 00					Bauer's, Jean
31	"	Ryan	OV ill	40 00	10 00			98 00	68 00	Ruscor, Rya
32	"	Nicholas	Inovwell Hep B	73 00	73 00					Baca, Nicol
	TOTALS THIS PAGE			1780	937	56	83	44 2803	2039	
	TOTALS PREVIOUS PAGE			22826	11664	548	448	46 4475	42046	
	TOTALS MONTH-TO-DATE			24606	12597	1085	531	90 4756	44085	

Col. "A" Col. "B1" Col. "B2" Col. "C" Col. "D"

PROOF OF POSTING	
COL. D TOTAL	$ 2039
PLUS COL. A TOTAL	$ 1780
SUB TOTAL	$ 3819
LESS COLS. B1 & B2	$ 1016
	$ 2803

ACCOUNTS RECEIVABLE CONTROL	
PREVIOUS DAY'S TOTAL	5818.32
PLUS COL. A	1780
SUB TOTAL	7598.32
LESS COLS. B1 & B2	1016
	6582.32

ACCOUNTS RECEIVABLE PROOF	
ACCTS. REC. 1ST OF MONTH	$ 3105
PLUS COL. A. MO. TO DATE	24601
SUB TOTAL	27706
LESS B1 & B2 MO. TO DATE	21128
	6578

App. 90

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[p. 13] **BY MR. MOYLEN:** Q Doctor, could you tell the Court –

MR. CORNBLATT: Respectfully, might I see the documents?

MR. MOYLEN: Oh, I'm sorry.

MR. CORNBLATT: I've not received these by way of discovery. I'll object to their being referred to in the trial.

MR. MOYLEN: Your Honor, these records and all of Dr. –

THE COURT: What are they? What's P-64?

BY MR. MOYLEN:

Q Doctor, could you just tell the Court what P-64 is.

A It's a, P-64 is a copy of my day sheets in which charges and payments are recorded each day in the office. And they're, the top of the date on the first page is 9/24/91, and the date on the bottom of the second page is 9/28/91. So, these include office charges from 9/24/91 to 9/28/91.

Q Was that –

MR. CORNBLATT: We've requested, respectfully, in discovery, copies of all data upon which, documents upon which there would be a reliance at trial. I am certain these weren't provided because I've been through the file thoroughly. And, consequently, I will object to their being introduced.

Q Doctor –

THE COURT: Have they been supplied, Mr. Moylen?

[p. 14] MR. MOYLEN: Yes. Your Honor, from my review of the file, I was not the attorney when this was done, but they were provided. And I'd like to ask the Doctor a question.

BY MR. MOYLEN:

Q Was that document provided to Mr. Donovan in connection with his evaluation?

A Yes, it was. Yes, it was.

MR. CORNBLATT: That doesn't make it evidential, your Honor, to me.

MR. MOYLEN: Your Honor, the fact that he relied upon it –

THE COURT: If it's evidential or not, what difference does it make? Mr. Donovan has testified.

MR. MOYLEN: That's correct.

THE COURT: His testimony is in. He wasn't cross-examined on it. What are we going to do with it now?

MR. MOYLEN: Your Honor –

THE COURT: How are we going to change the valuation? This man is not a business evaluator.

MR. MOYLEN: I'm not asking him for a valuation, your Honor. I'm going to ask him a very specific question.

BY MR. MOYLEN:

Q And that is, what were the amount of your receivables on September 26, 1991?

MR. CORNBLATT: Objection. Irrelevant. If, in fact, [p. 15] and I have no reason to doubt it, this data and everything else that this witness testified to was provided to Mr. Donovan and Mr. Donovan factored that into his evaluation, what has that to do with my right to see documents in advance before I'm forced to deal with them at a trial?

THE COURT: Well, the problem that I have, Mr. Cornblatt, is I wasn't with the case from the beginning, and obviously, I don't have all the discovery. You're telling me you didn't get it in discovery. Mr. Moyland is saying you did get it in discovery.

MR. CORNBLATT: If we may have just a moment or two, your Honor.

THE COURT: So, take the time to find out whether it's been produced or not. If it wasn't produced in discovery, I'm going to exclude it –

MR. CORNBLATT: Thank you, your Honor.

MR. MOYLEN: Your Honor –

THE COURT: – for the reason that it wasn't produced and for the reason I'm really unclear about the relevance of it in view of the fact Mr. Donovan has already given his testimony.

MR. MOYLEN: But if your Honor rules that way, then what your Honor is doing is saying that both

parties are bound by the expert's opinion. And although it is a Court-appointed expert, a party is not bound by that expert's opinion.

THE COURT: Mr. Moylen, you just got done telling the [p. 16] Court that this document, and your client just got done telling the Court that the document was given to Mr. Donovan.

MR. MOYLEN: That's correct. We, my client –

THE COURT: So, if he gave it to him, he factored it into his report. He's not here now. What are we going to do now? You had a chance to cross-examine him. You had a chance to ask him about the report. You didn't do it.

MR. MOYLEN: As a matter of fact, your Honor. I asked him specifically why he did not place a valuation upon the practice as of September 26, 1991, and he responded to that.

THE COURT: Wait, wait, wait. We're not going to get into the valuation date, Mr. Moylen. He explained the valuation date. He said the reason for the valuation date was that was the date that the counsel agreed to, no one ever raised an objection to it. He also said that the reason he didn't valuate it as of 12/31/91 was because it was going to be considerably more expensive and no one wanted to pay the expense of it.

MR. MOYLEN: Your Honor, my recollection was that he said that the reason he did it on that date was because it would have been more expensive. It is my recollection that he did not say that there was a –

THE COURT: That's right. That's what I just got done saying, didn't I?

MR. MOYLEN: Well, he did not say that there was an agreement of counsel as to the valuation date. As a matter of [p. 17] fact, he looked through his records and he indicated, according to my recollection –

THE COURT: He was a Court-appointed expert. He wasn't your expert; he wasn't Mr. Cornblatt's expert. Everyone sat on their hands, I'll say, worst-case scenario, and let him evaluate as of that date. I forget right now the date of the report, but it was a long time ago.

MR. MOYLEN: In 1993. 1993, I think it –

MR. CORNBLATT: The appropriate date –

THE COURT: And no one raised on objection then and no one raised an objection since.

MR. CORNBLATT: The appropriate –

MR. MOYLEN: Your Honor, my client has always objected to the valuation. And the Court is –

THE COURT: He may object to the valuation, Mr. Moylen, but you're stuck with it.

MR. MOYLEN: With all due respect, your Honor, I believe that my client is not stuck with it. And that, as a matter of fact, my client can introduce –

THE COURT: Well, that's my ruling. So, proceed, sir.

MR. MOYLEN: Very good. So –

MR. CORNBLATT: Did you want me to make reference just to the –

THE COURT: And I want to cover the discovery issue.

MR. CORNBLATT: – Interrogatory Number 54. Your Honor [p. 18] set forth –

THE COURT: The Interrogatory dated what date, sir?

MR. CORNBLATT: May 5, 1992, your Honor. And it requests – and these Interrogatories, I might add, were updated on July 6, 1994. However, Interrogatory Number 54 was not updated. The question set forth,

Q "Whether you or anyone acting on your behalf or any other persons to your knowledge has possession of or access to any documentary evidence, photographs, tapes, or other tangible evidence relating to the pleadings filed and within cause. If answer is yes, set forth. And then skipping A and B, C, annex here two copies of such evidence.

A None other than financial documents and statements in books of accounts as contained for Dover Pediatrics in the possession of Jerome Donovan, CPA."

MR. CORNBLATT: They were never provided. They were never attached. That's why I say I've never seen this. I know that. And, consequently, how could I prepare myself for cross-examination?

THE COURT: Well, the other thing is, too, how are we going to do it now? Mr. Donovan is not here.

MR. CORNBLATT: And, respectfully, if I may, your Honor, the appropriate response might have been –

THE COURT: And it doesn't bear on the valuation date anyway, because the valuation date, as I said, we're stuck with.

[p. 19] MR. CORNBLATT: The valuation date is in accordance with *Scavone*. It was the closest practical date to the date of filing. And that's –

THE COURT: Well, that was it. Everyone – and for the record, too, we might add, that Mr. Donovan still hasn't been paid. Now its' subject of a Court Order that I ordered on the –

MR. CORNBLATT: I'm unaware of that, your Honor. I didn't know that.

THE COURT: Excuse me?

MR. CORNBLATT: I'm unaware of that as of this moment. I didn't know that.

THE COURT: What, that he's not paid?

MR. CORNBLATT: He may have been paid over the weekend. I –

THE COURT: Well, maybe he was paid over the weekend.

MR. CORNBLATT: My assumption is the Doctor will comply with your Honor's Order. If he does not, I will move his incarceration.

THE COURT: I would assume so. Has he paid yet, sir?

MR. MOYLEN: I have a check for $1500 today, your Honor.

THE COURT: Okay. Good.

MR. MOYLEN: For Mr. Donovan.

MR. CORNBLATT: I don't think that was the amount.

[p. 20] MR. MOYLEN: No, it was not. He indicated that he was going to give me another check when he gets paid this week.

THE COURT: Fine.

MR. MOYLEN: So, your Honor's ruling is that I am not permitted to ask him what his receivables were as of September 26, 1991?

THE COURT: That's right.

MR. MOYLEN: Okay.

BY MR. MOYLEN:

Q Doctor, could you tell the Court the amount of cash in Dover Pediatrics bank account as of September 26, 1991?

A With the checks that I had outstanding for taxes that were dated September 15th, actually was zero or negative balance.

Q Your account was overdrawn. Is that what you're saying?

A It would have been if those checks had gone through, yes.

Q Now, Doctor, directing your attention to another matter –

THE WITNESS: Excuse me. May I have just –

THE COURT: No. There's no question in front of you, Doctor.

THE WITNESS: – a one-minute recess?

MR. MOYLEN: You can ask me at a break. It's okay. We'll cover it later, Doctor.

BY MR. MOLEN:

* * *

APPENDIX N

* * *

[p. 14] panel gets it. So, his Motion to change venue is denied.

He wants me to validate the prior alleged separation agreement, which is certainly something I can't do because he settled the matter, and he, in fact, repudiated it himself, and settled on new terms and conditions, so that's denied.

The supplemental Motion that he filed – oh, the other reason that he said his settlement should be set aside is because the trial took too long to get to. It was one of my oldest cases. The reason the case was so old was because Dr. Dixon filed for bankruptcy protection in Pennsylvania and there was a stay on the Court. And, of course, we'll get to that aspect of it, Mr. Cornblatt, when we get to your Motion.

But, there was an order that vacated the stay and allowed this Court to equitable distribute the assets. The Pennsylvania Court gave the parties a divorce on an earlier occasion, and then this Court was left with equitable distribution, alimony, child support, visitation and all the other issues. But, the reason for delaying the case was because of the bankruptcy filing.

He also says that he missed eight days from work and somehow that was unfair because his wife's a tea – ex-wife is a teacher and she was able to litigate during the summer when she was off, and he had to take off time from work, and he also had to travel from out-of-state,

and for some reason that was coercion. And, I'll be happy to admit that anyone involved in

* * *

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(201) 240-1115
Attorneys for Plaintiff

ARTHUR S. DIXON Plaintiff, vs. PAMELA JUNE DIXON Defendant.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION - FAMILY PART OCEAN COUNTY Docket No. FM-15-416-92 CIVIL ACTION COMPLAINT FOR DIVORCE ON THE GROUNDS OF EXTREME CRUELTY (Filed Sep. 26, 1991)

FIRST COUNT

The Plaintiff, Arthur S. Dixon, with his principal residence at 1919 Bay Boulevard, Unit #17 B, Docksider Condominium, Ortley Beach, Dover Township, County of Ocean, State of New Jersey, by way of Complaint against the Defendant, Pamela June Dixon, says:

1. He was lawfully married to Pamela June Dixon on or about April 28, 1984, in a religious ceremony at the Mission Orthodox Church, Wilkes-Barre, Pennsylvania.

2. He was a bona fide resident of the State of New Jersey when this cause of action arose and has ever since and for more

* * *

In Re: ARTHUR S. DIXON

Case No: 5-94-00898

(Filed Dec. 12, 1994)

Debtor

The debtor's plan filed on July 12, 1994, [if appropriate, as modified by a modification filed on,] having been transmitted to his creditors; and [if appropriate] the deposit required by the plan in the sum of $ N/A having been made;

and

If having been determined after notice and a hearing that:

(1) the plan complies with the provisions of this chapter and with other applicable provisions of this title;

(2) any fee, charge, or amount required under 28 U.S.C. chapter 123 or by the plan, to be paid before confirmation, has been paid;

(3) the plan has been proposed in good faith and not by any means forbidden by law;

(4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under 11 U.S.C. chapter 7 on such date;

(5) with respect to each allowed secured claim provided for by the plan –

(A) the holder of such claim has accepted the plan;

(B)(i) the value, asof [sic] the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim; or

(C) the debtor surrenders the property securing such claim to such holder; and

(6) the debtor will be able to make all payments under the plan and to comply with the plan:

It is ordered that:

1. The debtor's plan [if appropriate, as modified] be and it hereby is confirmed.

2. On August 12, 1994, and each month thereafter until further order, the debtor shall pay to the trustee, Charles J. DeHart, III, Trustee, P.O. box 410, Hummelstown, PA 17036 the sum of $ 110.00 for a period of 12 months; $220.00 for months 13-24; $330.00 during months 25-36; $440.00 during months 37-48; and $427.59 during the final 12 months.

Dated: December 12, 1994

BY THE COURT

/s/ John J. Thomas
Bankruptcy Judge

APPENDIX O

[p. 38] Colloquy

* * *

have a visitation order, it was reasonable and liberal, he was supposed to schedule in advance and he's supposed to let her know a month in advance, so I don't see any reason to interfere with that schedule. I don't find that she's frustrated visitation at this point. There was one dispute about him wanting to reschedule visitation, but the little girl, Virginia, had a dance recital that went on a Friday night and a Saturday, and Virginia's mother thought it was important that she go to both recitals. Dr. Dixon didn't think it was important to go to Saturday's recital, if she went the Friday that was good enough. I can't say that I agree with that.

MR. CORNBLATT: And, Dr. Dixon, I –

THE COURT: What I know about dancing lessons is they have a recital, like, twice a year and it's important to the kids and it's important to the parents.

MR. CORNBLATT: And, the doctor was invited, the doctor was invited, I believe, to the recitals.

THE COURT: So, at any rate the schedule is good. We're not going to allow the kids to be removed early from school, and there's no reason for me to compel her to do anything. We have an order, if she violates the order he can come back into Court.

He wants an order, he wants sanctions if she violates the restraining order prohibiting her from harassing him and interfering with his visitation. There's no restraining order [p. 39] against her that I know of, is there?

MR. CORNBLATT: Not that I'm aware of.

THE COURT: But, certainly if she harasses him he has his remedies in Municipal Court, 2C:33.

MR. CORNBLATT: Yes, sir. May I, I'm sorry.

THE COURT: Order that Defendant comply with joint custody order. This relates to his complaint that they ought to be able – he ought to have equal input on taking the children out of school for visitation.

MR. CORNBLATT: The Supreme Court in *Pascale* has very conclusively dealt with that issue just recently, and pointed out that the primary custodial parent, they've changed a term, of necessity has more responsibility and must have more authority.

THE COURT: Well, we've already discussed the school issue and for, whether I'm right or wrong, I just think that the children's job is to go to school.

MR. CORNBLATT: Yes, sir.

THE COURT: And, that's their job. Adults have other jobs to go to, kids have school to go to, so –

MR. CORNBLATT: In order that we have clean lines –

THE COURT: And, then he asked me again to recuse myself, and I directed myself to that argument before, and that request for relief, okay.

MR. CORNBLATT: Yes, sir. In order that we might have

* * *

Superior Court of New Jersey, Chancery Division,
Family Part, Ocean County

Prevention of Domestic Violence Act

[X] FINAL RESTRAINING ORDER (FRO)
[ ] AMENDED FINAL RESTRAINING ORDER

IN THE MATTER OF:

Arthur S. Dixon
PLAINTIFF
D.O.B. 1/2/49

Docket #: FV-15-19-94

Pamela J. Dixon
DEFENDANT

Sex: F D.O.B. 6/8/57

Soc. Sec. #: _____

DEFENDANT'S HOME ADDRESS/TELEPHONE #

DEFENDANT'S WORK ADDRESS/TELEPHONE #:
511 Dolos Dr. Toms River, NJ

The Court, having considered plaintiff's Complaint dated 7/2/93 seeking an ORDER under the Prevention of Domestic Violence Act, and having found good cause to believe that plaintiff's life, health, and well-being have been and are endangered by defendant's act(s) of violence:

It is on this 8 day of July, 1993, ORDERED that:

PART I

§29b(1) [X] Defendant is prohibited against future acts of domestic violence.

§29b(6) [X] Defendant is prohibited from having contact with:

[X] Victim Communication or visitation permitted via telephone

[ ] Family / Household Members (list names of affected family / household members)

_____

_____

[X] Defendant is barred from the following locations (**DO NOT LIST VICTIM'S CURRENT PLACE OF RESIDENCE OR EMPLOYMENT** except where the location is specifically known to the defendant)

_____Plaintiffs Residence

_____

§29b(7) [X] Defendant is prohibited from making harassing communications to (indicate name and relationship to victim).

_____Plaintiff

_____

_____

* * *

§29b(11) [X] ~~Plaintiff is granted temporary~~ child custody of (specify name(s)) Per Family FM Action

* * *

PART II

§29B(3) [xx] Visitation per FM Action

_____

under the following conditions:

(specify drop-off & pick-up times & locations)

1. Curbside pick-up and drop-off
(specify participation of or supervision by designated third party)

* * *

This Order is to become effective immediately and shall remain in effect until further Order of the Superior Court.

Chancery Division, Family Part.

All Municipal, County, State Police and Sheriff's Office's will serve and fully enforce this ORDER.

7-8-93
DATE

/s/ Robert A. Fall
Honorable ROBERT A. FALL
J.S.C.

THIS ORDER CANNOT BE CHANGED BY EITHER PARTY WITHOUT OBTAINING A WRITTEN COURT ORDER. IF YOU WISH TO CHANGE THE TERMS OF THIS ORDER, AND / OR YOU RESUME LIVING TOGETHER, BOTH PARTIES MUST APPEAR BEFORE THIS COURT FOR A REHEARING. HOWEVER, THE PLAINTIFF SHALL NOT BE ARRESTED FOR A VIOLATION OF THIS RESTRAINING ORDER.

RETURN OF SERVICE

[ ] Plaintiff was given a copy of the Order by _____
[✓] I hereby certify that I served the within Order by delivering a copy to the defendant personally.

[ ] I hereby certify that I served the within Order by use of substituted service as follows:

_____

[ ] Defendant could not be served. Explain: _____

7/8/93
DATE

/s/ Illegible Signature s/o No. 53
SIGNATURE, TITLE
& DEPARTMENT OR OFFICE

_____

APPENDIX P

NEW JERSEY STATE CONSTITUTION – ARTICLE VI

SECTION V

1. Appeals may be taken to the Supreme Court:

(a) in causes determined by the appellate division of the Superior Court involving a question arising under the Constitution of the United States or this State;

(b) In causes where there is a dissent in the Appellate Division of the Superior Court;

(c) In capital causes;

(d) On certification by the Supreme Court to the Superior Court and, where provided by rules of the Supreme Court, to the inferior courts; and

(e) In such causes as may be provided by law.

2. Appeals may be taken to the Appellate Division of the Superior Court from the law and chancery division of the Superior Court and in such other causes as may be provided by law.

3. The Supreme Court and the Appellate Division of the Superior Court may exercise such original jurisdiction as may be necessary to the complete determination of any cause on review.

4. Prerogative writs are superseded, and, in lieu thereof, review, hearing and relief shall be afforded in the Superior Court, on terms and in the manner provided by rules of the Supreme Court, as of right, except in criminal causes where such review shall be discretionary.